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# THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur, pursuant to Commission resolution 1992/6

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# I. INTRODUCTION

1. At its forty-eighth session, the Commission on Human Rights considered the ninth report of the Special Rapporteur (E/CN.4/1992/12) and adopted, without a vote, its resolution 1992/6 of 21 February 1992, in which it took note with appreciation of the report of the Special Rapporteur (sixth preambular paragraph), decided to extend his mandate for three years to enable him to carry out further studies on the use of mercenaries and to make recommendations to the Commission accordingly (para. 3); and requested the Special Rapporteur to report to the Commission at its forty-ninth session on all further developments concerning the use of mercenaries, wherever it might occur (para. 4). The Commission reaffirmed that the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to all States (para. 1) and called upon all States that had not yet done so to consider taking early action to accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (para. 2).

2. By its decision 1992/225 of 20 July 1992, the Economic and Social Council approved resolution 1992/6 of the Commission on Human Rights.

3. The General Assembly had earlier adopted its resolution 46/89 of 16 December 1991 by which, inter alia, it reaffirmed that the use of mercenaries and their recruitment, financing and training were offences of grave concern to all States and violated the purposes and principles enshrined in the Charter of the United Nations (para. 3). The General Assembly requested the Special Rapporteur to report to the General Assembly at its forty-seventh session on the use of mercenaries (para. 10).

4. Pursuant to the request of the General Assembly, the Special Rapporteur submitted his report (A/47/312, annex) to the Third Committee of the General Assembly on 13 October 1992. This report contains information on mercenary activities which came to the attention of the Special Rapporteur during the period January-July 1992.

5. On 19 December 1992, the General Assembly adopted resolution 47/84 in which it reaffirmed that the use of mercenaries and their recruitment, financing and training were offences of grave concern to all States and violated the purposes and principles enshrined in the Charter of the United Nations (para. 3). The General Assembly denounced any State that persisted in the recruitment, or permitted or tolerated the recruitment, of mercenaries and provided facilities to them for launching armed aggression against other States (para. 5). It also urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to ensure, by both administrative and legislative measures, that the territory of those States and other territories under their control, as well as their nationals, were not used for the recruitment, assembly, financing, training and transit of mercenaries, or for the planning of activities designed to destabilize or overthrow the Government of any State and to fight the national liberation movements struggling against racism, apartheid, colonial domination and foreign intervention or occupation (para. 6).

6. The General Assembly called upon all States to extend humanitarian assistance to victims of situations resulting from the use of mercenaries, as well as from colonial or alien domination or foreign occupation (para. 7). It reaffirmed that to use channels of humanitarian and other assistance to finance, train and arm mercenaries was inadmissible (para. 8) and it called upon all States that had not yet done so to consider taking early action to accede to or to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (para. 9). It also condemned the continued recruitment, financing, training, assembly, transit and use of mercenaries, as well as all other forms of support to mercenaries, for the purpose of destabilizing and overthrowing the Governments of African States and of other developing States and fighting against the national liberation movements of peoples struggling for the exercise of their right to self-determination (para. 2). In addition, it noted with serious concern the use by the Government of South Africa of groups of armed mercenaries against national liberation movements (para. 4). The General Assembly took note with appreciation of the report of the Special Rapporteur (A/47/412, annex) and requested him to report to the General Assembly at its forty-eighth session on the use of mercenaries, especially in view of the additional elements highlighted in his report (paras. 1 and 10).

7. In addition to the mandate entrusted to him by the Commission on Human Rights by its resolution 1992/6, the Special Rapporteur also has to implement the provisions of the Commission's resolution 1992/42, adopted on 28 February 1992. The Commission, in paragraph 2 of this resolution, requests all special rapporteurs and working groups, in their next report to the Commission, "to continue paying particular attention to the adverse effects on the enjoyment of human rights of such acts or violence committed by armed groups, regardless of their origin, that spread terror among the population, and by drug traffickers". In implementation of this resolution, the Special Rapporteur has included in chapter VII of the present report an analysis of complaints of acts of this kind submitted through the Centre for Human Rights.

8. Pursuant to the aforementioned resolutions, the Special Rapporteur has the honour to submit to the Commission on Human Rights his tenth report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, and on the adverse effects on the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population and by drug traffickers.

## II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

### A. Implementation of the programme of activities

9. The Special Rapporteur travelled to Geneva on 26 January 1992 in order to open, as outgoing Chairman, the forty-eighth session of the Commission on Human Rights, and also to submit his ninth report (E/CN.4/1992/12). On 29 January 1992, at the 3rd meeting of the session, the Special Rapporteur introduced, under agenda item 9, his report dealing with the right of peoples to self-determination and its application to peoples subject to colonial or foreign rule or foreign occupation. During his stay in Geneva, the

Special Rapporteur held consultations with representatives of a number of States and met members of non-governmental organizations. He also held coordination meetings with the Centre for Human Rights and especially with the Special Procedures Section.

10. The Special Rapporteur visited Geneva again from 12 to 18 July 1992 in order to hold consultations and talks and to determine the general outline of the report he had to submit to the General Assembly.

11. On 13 October 1992 the Special Rapporteur introduced his report (A/47/412, annex) in the Third Committee of the General Assembly. During his stay in New York he held consultations with representatives of a number of States and non-governmental organizations. Of particular importance were the interview he had with the representative of the Government of South Africa on the progress of the process of liquidating apartheid in that country and his interviews with the representatives of the Republics of Bosnia and Herzegovina, Croatia, Slovenia and of the Federal Republic of Yugoslavia, because of the serious complaints which had been received concerning the participation of mercenaries of various nationalities in the armed conflicts which had taken place and are continuing in the former Yugoslavia. The Special Rapporteur reports on these interviews in chapters IV and V of the present report.

12. The Special Rapporteur again visited Geneva from 7 to 12 December 1992 in order to draft the present report and hold various consultations related to the fulfilment of his mandate.

## B. Correspondence

13. Pursuant to General Assembly resolution 46/89 of 16 December 1991 and Commission on Human Rights resolution 1992/6 of 21 February 1992, the Special Rapporteur sent, on 13 April 1992, communications to all States Members of the United Nations requesting information on the following matters:

> "(a) Any mercenary activities which, in violation of the sovereignty and laws of your country, might have occurred or be occurring in your territory (recruitment, use, financing, transport or training of mercenaries);
>
> (b) Any mercenary activities on the territory of another country which impairs or might impair the sovereignty of your State and the exercise of the right of your people to self-determination;
>
> (c) Any mercenary activities on the territory of another country which impaired or might impair the sovereignty of other countries in your subregion, region or continent, and the exercise of the right of other peoples to self-determination;
>
> (d) Domestic legislation currently in force and international treaties to which your country is a party, relating to the prohibition of mercenary activities and their use as a means of violating the sovereignty of other States and impeding the exercise of the right of peoples to self-determination;

(e) The position of your Government with respect to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989;

(f) Suggestions which, in the opinion of your Government, could be useful for the enhancement of the international approach to the use of mercenaries as a means of violating the human rights and impeding the exercise of the right of peoples to self-determination."

14. The report submitted to the General Assembly (A/47/412, annex) records the considerable amount of correspondence received by the Special Rapporteur in reply to his communication of 13 April 1992, from the following States: Saudi Arabia (16 April 1992; A/47/412, annex, para. 14); Equatorial Guinea (27 April 1992; para. 15); Kenya (6 May 1992; para. 16); Oman (8 May 1992; para. 17); Luxembourg (2 June 1992; para. 18); San Marino (29 April 1992; para. 19); Liechtenstein (18 May 1992; para. 20); Venezuela (2 June 1992; paras. 21 to 24); Angola (4 June 1992; para. 25); Morocco (5 June 1992; para. 26); Guyana (9 July 1992; para. 28); Austria (14 July 1992; para. 29); Ecuador (23 July 1992; para. 30); Namibia (22 July 1992; para. 31); Australia (30 July 1992; para. 32); and Turkey (30 July 1992; para. 33).

15. The communications received by the Special Rapporteur reveal clear positions of rejection and condemnation of the recruitment, use, financing and training of mercenaries and contain very specific references to the domestic legislation of various countries which specifies the particular type of mercenary activity that constitutes an offence, or refers to other provisions of criminal law that are or may be applicable for the prosecution and punishment of mercenaries.

16. Special attention is drawn to the reply of the Government of Ecuador, which provides detailed information on the activities of the Ecuadorian subversive group "Alfaro Vive Carajo" (AVC) which is reported to have connections, not only with subversive groups in other countries, but also with hired killers and mercenaries who operated in Ecuadorian territory in order to cause the death of various Ecuadorian citizens. The information furnished by the Government of Ecuador also refers to the alliance between guerrillas and drug traffickers in Colombia and Peru, which has also affected Ecuador because of its geographical proximity to these countries.

17. On 25 May 1992 the Permanent Mission of the Republic of Indonesia reported to the Special Rapporteur as follows:

"(a) There is no Indonesian citizen known to be involved in the activities of foreign mercenaries abroad, or any activities of foreign mercenaries which impair the sovereignty of Indonesia.

(b) As yet Indonesia is not a party to any treaty which prohibits the activities of mercenaries and their use as a means of violating the sovereignty of other States and impeding the exercise of the right of peoples to self-determination. However, a provision in the Indonesian Citizenship Act of 1958 strictly prohibits Indonesian citizens from

becoming mercenaries. The provision further stipulates that any Indonesian citizen who becomes a mercenary or joins a foreign army will lose his/her Indonesian citizenship.

(c) Indonesia supports any effort aimed at rejecting the use of mercenaries for any purpose including suppressing the right of people to self-determination."

18. During his visit to Geneva in July 1992 to determine the general outline and commence the drafting of his report to the General Assembly, the Special Rapporteur sent communications to the Governments of Angola, Mozambique and South Africa, to the States which have emerged from the former Socialist Federal Republic of Yugoslavia, and to the African National Congress (ANC). Replies to these communications were received from the Governments of Angola, Croatia, Slovenia and the Federal Republic of Yugoslavia. These replies are summarized in the relevant chapters of this report.

19. On 9 July 1992 the Ministry of Foreign Affairs and Cooperation of the Republic of Guinea sent a note to the Special Rapporteur conveying the views of the Guinean Government on the questions raised by the Special Rapporteur in his communication of 13 April 1992. This note, received by the Special Rapporteur on 5 August 1992 contains the following statement:

"(a) and (d) The Ministry of Foreign Affairs and Cooperation draws attention to the fact that, by note No. 1037/MAE/DAJC/91 of 20 September 1991 addressed to the Special Rapporteur, the Republic of Guinea has already given its views on points (a) and (d) and on a number of other points in this letter. The Ministry of Foreign Affairs and Cooperation confirms those views.

(b) and (c) With reference to points (b) and (c), the Ministry of Foreign Affairs and Cooperation requests the Special Rapporteur to take account of the following observations regarding the existence of any mercenary activity:

If mercenaries are deemed to be persons recruited to fight in an armed conflict who have material advantages greater than those of the regular combatants and are not nationals of one of the parties in conflict, then the Republic of Guinea has no comment to make, inasmuch as there has been no report anywhere in Guinea or in the subregion of activities of mercenaries that are impairing the sovereignty of the Republic of Guinea or of any of the countries of West Africa, and the exercise of the right of peoples to self-determination.

(e) The General Assembly, by adopting on 4 December 1989 the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, established an additional norm of international criminal law, thus helping to strengthen the juridical arsenal needed for the maintenance of international peace and security, a particular aim of the United Nations.

The Republic of Guinea, by voting in favour of the adoption of this Convention, showed its determination to support the United Nations in its

efforts in favour of peace and it is its intention to give effect to the Convention in Guinean legislation and in international relations.

(f) The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination is an interesting and topical issue, having regard to the scope of the democratic process that has been initiated since the ending of the bipolar era. The exercise of the right of peoples to self-determination is a potent weapon available to peoples in determining and managing their political future.

Consequently, the Republic of Guinea suggests that seminars be held at the regional or subregional level to arouse interest in the exercise of this right.

Such meetings should also be held at the national level, particularly for the benefit of officials responsible for the application of criminal law. It is hoped that the Centre for Human Rights might make a financial contribution in favour of the least developed countries (LDCs)."

20. On 5 August 1992 the Ministry of Foreign Affairs of the Republic of Moldova sent a communication in the following terms:

"The Ministry of Foreign Affairs of the Republic of Moldova has proposed to the Ministry of Justice that it should draft a law or appropriate amendments to the Criminal Code stipulating that the recruitment, financing, training and use of mercenaries on its territories, or their movement through it territory, is a punishable offence. Citizens would also be prohibited from enlisting as mercenaries.

With regard to the information which we would like to have included in your report, we wish to inform you that we possess irrefutable evidence that Kazakhs and citizens of the Russian Federation have been participating in the armed conflict in the eastern regions of the Republic of Moldova. This runs counter to General Assembly resolutions 46/87 and 46/88."

21. With reference to the communication referred to in the preceding paragraph, the Special Rapporteur considers that the Government of the Republic of Moldova should furnish more detailed information concerning the irrefutable evidence it claims to possess concerning the participation of citizens of the Russian Federation and Kazakhs in the armed conflict in the eastern regions of the Republic of Moldova. This information is needed in order to determine whether they have been so participating as mercenaries or as members of regular armed forces.

22. The Permanent Mission of Cuba to the Office of the United Nations at Geneva transmitted the reply of the Government of the Republic of Cuba to the

request for information by the Special Rapporteur in a letter dated 23 July 1992 from the Minister for Foreign Affairs of that country. The letter reads as follows:

"The use, recruitment, financing and training of mercenaries are offences of grave concern to all States, because they violate the basic principles of international law, such as non-intervention in the internal affairs of States, territorial integrity and independence, and impede the right to self-determination of peoples seeking to combat colonialism, racism, apartheid and all forms of foreign domination and occupation. Mercenary activities represent a flagrant breach of basic and inalienable human rights.

Although it is true or likely, as the Special Rapporteur notes in his report (A/46/459), that there are usually mercenary activities where there is an international or internal armed conflict, it is equally true that this phenomenon also occurs in peacetime. It would be a mistake to assume that, with the end of the cold war, these activities are declining or disappearing in a world characterized by the growing unipolar hegemony of the United States in the political and military spheres. The case of Cuba is a clear illustration of that fact.

As the Special Rapporteur is well aware, in 1961 Cuba was the victim of a mercenary attack sponsored by the United States Government, which recruited, trained and financed the operation using Cuban nationals resident in the United States. Consequently, the Cuban Government takes the view that nationals must also be considered mercenaries when they are paid by a foreign power to attack their country.

Although the invasion of Playa Girón or the Bay of Pigs as it is also known, was the most significant example of a large-scale mercenary attack, it has not been the only one. For more than 30 years, the Cuban people has had to suffer attacks of all kinds, promoted, encouraged and tolerated by the United States Government, which has been unrelenting in its vain efforts to overthrow the Cuban revolution.

These actions have ranged from efforts to sabotage the domestic economy, operations to infiltrate our coasts, military-style attacks and assaults on Cuban ships in international waters, and assassination attempts against political leaders, to the blowing up of a Cuban airlines commercial flight with 73 passengers on board.

This criminal policy is still being pursued against the Cuban people at the present time.

Known mercenaries have taken part in all these activities, which are tantamount to terrorism, and some of them continue to live in total freedom and with absolute impunity within the territory of the United States, from where they hatch fresh plans which they announce publicly and then brag about after the event.

Mercenary and terrorist groups on the territory of the United States, backed up by publicity, openly organize themselves militarily, train with weapons and explosives, and unashamedly publicize their plans for aggressive and illegal actions against Cuba.

In January 1991, for example, a group of this kind based in Miami, Florida, announced its intention to attack Cuba in the Diario de las Américas. The announcement was made publicly at a press conference at the group's headquarters located at 408 South East, 22nd Avenue, Miami.

Subsequently, on 30 August 1991, the same group whose name is "ALFA 66", announced that it had a force of 100 highly-trained men ready to attack Cuba. This assertion was made by Mr. Antonio López, one of the military leaders of ALFA 66, who had served for six years in the United States army, according to the Diario de la Américas.

The Cuban Government has reliable information to the effect that the main operations of this group are organized from a training base known as RUMBO SUR, located at 40th Street SW and 172nd Avenue, Miami. The commanders of the base are Humberto Pérez, Francisco García, and Enrico García who are all resident in Miami, Florida. It is also known that United States marines are acting as instructors at the base.

On 29 December 1991, another mercenary group, the so-called "Comandos L", landed in Cuba and was captured; their mission was to carry out terrorist attacks on civilian targets and to assassinate the President of the Council of State and of the Council of Ministers of the Republic of Cuba, Fidel Castro.

The members of this group revealed, with a wealth of detail how they used training camps and installations in Florida to prepare their illegal activities.

The leader of the "Comandos L" group, Antonia Cuesta, publicly acknowledged responsibility for the action in Miami. Also associated with Antonio Cuesta are two other terrorists, Rolando Nieves, of Cuban origin, and Anthony Brian, a United States citizen.

More recently, on 4 July 1992, another paramilitary group belonging to the 'Comandos L' and consisting of known members of the organization including an American, Anthony Brian, and the Cubans, Eugenio Llameras, Guillermo Casasus and Alejandro Benito Pérez, entered Cuban waters clandestinely and illegally to the north of Matanzas province, on board the vessel 2059 HJ, which was assisted in an alleged rescue and salvage operation by the United States Coast Guard.

This rescue operation took place in Cuban territorial waters without the consent of the Cuban authorities. However, even more serious was the fact that the spokesman for the United States Customs Service publicly confirmed that the vessel (registration no. 2059 HJ) was carrying on board three semi-automatic rifles, a shotgun and several

commando knives. Nevertheless, no action was taken against these individuals, who continue to enjoy the protection of the United States authorities.

In addition, in reply to point (f) of the questionnaire submitted by the Special Rapporteur, my Government wishes to request the latter to use his good offices to obtain from the United States Government all available information concerning both the whereabouts of Luis Posada Carriles and the legal position of Orlando Bosh, who organized and were the principal authors of the blowing up of a Cuban aircraft in 1976.

It is known that Posada Carriles, a former CIA agent, mercenary and terrorist, after escaping from a Venezuelan prison thanks to a US$ 50,000 bribe paid by another mercenary, Jorge Más Canosa, the President of the so-called National Cuban-American Foundation, appeared in El Salvador with a new identity and became an employee in the pay of the United States Government, working for the notorious Lieutenant-Colonel Oliver North in his arms dealing operations for the Nicaraguan 'Contras' in Central America in 1986.

Recently, a Miami weekly newspaper (Tropic) published a lengthy interview with Posada Carriles, describing aspects of his life in great detail, but without revealing his permanent whereabouts.

Orlando Bosh is known to be living openly in the United States, writing for newspapers in that country.

Meanwhile, the crime these men committed still cries out for justice.

In the light of these events and this information, the Cuban Government considers that, on the basis of the many General Assembly and Security Council resolutions seeking to condemn, combat and eradicate mercenary activities and international terrorism, the Special Rapporteur should draw up firm proposals for updating the criterion used for the definition of mercenary activities so as to include both those who are directly involved in such activities and those who seek to promote them through the recruitment, financing, training and use of mercenaries, including any natural or legal person who is involved in those activities, irrespective of whether that person is a national of the country against which the attack is directed.

The Special Rapporteur should also examine the growing links that may be observed between mercenary and terrorist activities, in violation of the Universal Declaration of Human Rights and the free exercise of the right of peoples to self-determination."

23. The Special Rapporteur particularly welcomes the suggestions by the Minister for Foreign Affairs of the Cuban Republic concerning the drawing up of proposals to update the concept of mercenary activity in all its aspects. In this connection, the previous reports of the Special Rapporteur have provided assessments of the theories and ideas involved, based on a study of trends observed in mercenary activities, with a view to providing the

international community with enough information to enable it to determine the procedures to be followed and the penalties to be introduced in order to effectively prohibit mercenary activities once and for all.

24. Nevertheless, the Special Rapporteur must reiterate that his study and assessment of situations of violations of human rights and of the right of peoples to self-determination involving the use of mercenaries must be undertaken strictly within the confines of the international legal framework governing this question, namely Additional Protocol I of 1977 to the Geneva Conventions of 1949, the Convention adopted in 1977 by the Organization of African Unity and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries adopted by the General Assembly on 4 December 1989. Article 1 of the International Convention defines a mercenary strictly as someone who is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict, and who is neither a national nor a resident of the State against which a concerted act of violence is directed, aimed at overthrowing a Government or otherwise undermining the constitutional order or territorial integrity of a State. The International Convention emphasizes that, in order to be defined as a mercenary, a person must be an alien. The position of the Cuban Government that a national of a country should also be considered a mercenary when he commits a concerted act of violence against his own country while in the pay of a foreign power is one which should be considered in a competent forum.

25. On 7 August 1992, the Permanent Mission of the Philippines to the United Nations Office at Geneva replied to the Special Rapporteur's request as follows:

> "The Philippine Commission on Human Rights does not have any data concerning the recruitment, financing and training of mercenaries in the Philippines. Furthermore, there is no pending bill in the Congress of the Philippines, much less any existing law on this subject."

26. In a communication dated 17 August 1992, the Permanent Mission of the Islamic Republic of Iran to the United Nations Office at Geneva replied to the request for information by the Special Rapporteur as follows:

> "In the Name of Allah, the Compassionate, the Merciful. The Islamic Republic of Iran since its establishment in 1979 has been faced with various kinds of plots and aggressions, notably, an eight year long war imposed by Iraq, terrorism and the use of mercenaries. Here, brief information on various aspects of terrorist and mercenary activities perpetrated by the People's Mojahedin Organization of Iran (PMOI) and its effects in Iran and Iraq is presented.
>
> With regard to the terrorist activities in the Islamic Republic of Iran it should be noted that several groups under the pretext of political activities were involved in terrorist operations and have acted as agents of the enemy. One of the notorious groups is the so-called People's Mojahedin Organization of Iran (PMOI) which has committed numerous individual and mass killings not only inside Iran but also against the Shia' and Kurdish population of Iraq.

Since 1979, this group, which was formed on the basis of Stalinistic perspectives, chose the direction of antagonism against the Iranian leadership, government and people. From the very beginning the group began to show its hostility towards the Islamic Republic of Iran and demonstrated its intentions by doing subversive activities such as hijacking, bomb attacking, indiscriminate killing of innocent people and murdering hundreds of men and women including students, clergy, pedestrians, young and old civilians. During only one of their terrorist operation, 72 of governmental officials, including ministers and MPs, were martyred in a bomb explosion on 28 June 1981. The violent actions committed by this group, and their obvious wrongdoing in the society, made people reject them and caused their political isolation more than ever.

Facing political frustration and people's distrust, the group, led by Massoud Rajavi, resorted to armed struggle against the Islamic Republic of Iran and joined as ally to the Iraqi regime and began to intensify its clandestine terrorist activities inside Iran and military operations on the other side of the border.

The group continued its collaboration with the Iraqi regime during the long-lasting war against the Islamic Republic of Iran and received a great deal of political, financial and military support. They not only became actively involved in the aggression against Iran, but also played the role of a fifth column in gathering information to be handed over to Iraqi intelligence authorities and in committing sabotage in the army installations and weapons in favour of the Iraqi regime. The Iranian army, in its task to protect borders against foreign invasion, always came under the attack of PMOI forces resulting in human casualties and damages to army properties and centres.

Here are the result of some operations reported in the newsletters of the Organization:

- Mojahed No. 252, page 98: In a series of military operations at the end of the month of Ordibehesht (May), the members of martyr mojahed Amin resistant group destroyed 4 PRC radios in the logistic base of Abbas Abad in Tehran;

- Mojahed No. 197, page 24: Mojahed militants attacked the radar base in Sardasht with R.P.G.7 and automatic weapons, at 11:30 pm.;

- Mojahed No. 222, page 8: The military personnel of martyr mojahed Ghasem Moloudizadeh resistance group destroyed more than 52 parts (bench stock) of F-4 and C-130 airplanes in Tehran;

- Mojahed No. 252, page 100: In a series of military operations the PMOI members:

  - set fire to 18 espionage centres and places for gathering aids for battle fronts;

  - destroyed five F-5 jet fighters;

- destroyed 115 tanks;

- destroyed equipment and parts which were vital for war in 47 cases.

- Orgon, the newsletter of the Union of Muslim Students Associations Abroad affiliated to PMOI, No. 38, page 11: The following high-level military officials were killed in the course of an attack on the Lavizan military base in Tehran: Nasr, one of the Islamic Revolutionary Guards Corps (IRCG) commanders; Shaghaghi, one of the IRCG's officials; Colonel Fazlolah Tohidi; Colonel Khorsand; Colonel Havand Faghih; Colonel Badr Khahan; Colonels Sadat Yar-Bamdad, Momeni, Khorsand and Zandi;

- Mojahed No. 221, page 5: The members of martyr Mehrjoo resistant group in the course of an operation on 12 of Shahrivar (3 of September) destroyed the engine of an F-4 jet fighter in Tehran;

- The same group on 23 of Shahrivar (14 of September) destroyed a part of a C-130 personnel carrier in Tehran;

- A resistance group destroyed the engine of a C-130 in National Airplane Industries on 3 of Shahrivar (September);

- The members of martyr mojahed Ghasem Moloodizadeh resistant group destroyed the engine of an F-4 on 1 of Mehr (23 of September).

The PMOI's leaders' next step was to ask all their active members to join them in Iraq, in order to create and organize primary cells for the so-called future government of Iran and also to evaluate different ways of attracting those few followers whom they had in Iran. Thus, by establishing their own military bases in Iraq as the centres for organizing and training the so-called 'National Liberation Army', the leaders of this group particularly yielded a new force to the Iraqi Army to be used in a war of aggression, which the former Secretary-General of the United Nations, in a report to the Security Council (S/23273, dated 9 December 1991), describes as '... the illegal use of force and the disregard for the territorial integrity of a Member State'. In the same report he adds that '... Accordingly, the outstanding event under the violations referred to in paragraph 5 above (of the report) is the attack of 22 September 1980 against Iran, which cannot be justified under the Charter of the United Nations, any recognized rules and principles of international law ...'.

During this period while the innocent civilians of Iran were constantly attacked by bombs, rockets and missiles, and a considerable number of them were being killed, the Mojahedin (PMOI) were assessing and contemplating new plans to spread the domain of their crimes and treachery that they were being paid for.

In the course of the first visit of Mr. Reynaldo Galindo Pohl, the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran, most of the allegations

raised by the PMOI and other similar groups with regard to the human rights violations in Iran were found to be baseless and fabricated.

The Special Representative in his report to the Commission (E/CN.4/1990/24), while condemning terrorism and terrorist activities in Iran ruled out the main parts of these allegations. In paragraph 239, the Special Representative observes that 'there is a deep split in Iranian society as a result of the hectic revolutionary period and that one ingredient in this split has been the armed struggle, in which terrorism has had a part, sometimes with devastating effects'. In paragraph 240 he goes on to say that '... as in earlier reports, (the Special Representative) condemns terrorism in all its forms, whatever the motive, pretext or aim. During the visit to the Islamic Republic of Iran, he received ample official and private information about the disastrous effects of this kind of political activities'. In paragraph 243 he adds '... the allegation that political prisoners had been executed under false charges of drug trafficking was given special attention during the visit ... . In the light of his conviction and in all honesty, the Special Representative considers that, unless specific proof is submitted to him in this regard, this allegation involves elements of speculation and he rules it out.'

Furthermore, in his report to the Commission pursuant to his second visit to Iran (E/CN.4/1991/35, para. 479), the Special Representative condemns once again terrorism and reiterates on his belief that '... terrorism is a form of political struggle which must be eradicated for legal, humanitarian and even political reasons and which should be condemned in all its manifestations.'

Amnesty International on page 10 of its January 1992 report on the Human Rights situation in Iran, also mentions violations committed by such groups in the following words: 'Until September 1991 Amnesty International's policy with regard to human rights violations committed by political opposition groups was limited to condemnation of the torture or killing of prisoners. However, this was extended by the organization's International Council Meeting held in September 1991 to oppose, among other things, deliberate and arbitrary killings committed by opposition groups. Such violations have been committed in the past by political opposition movements inside Iran (AI Index: MDE 13/01/92)'.

Moreover, according to a United States State Department memo (document No. 2969A) released on 14 June 1985, the PMOI, which was founded in the 1960s as a terrorist group opposing the government of the then regime, has continued its terrorism during the era of the new Islamic regime. The memo continues: 'The Mojahedin used terrorist and guerrilla violence against their former partners, including two large-scale bomb attacks in June and August 1981 which killed well over one hundred persons. In June 1980 PMOI Rajavi, leader of the group, fled the country but planting of bombs and other violent actions continued in Iran and many innocent civilians lost their lives in these operations. The PMOI remains a militant organization which continues to employ terrorism and violence as standard instruments of its policies.'

The Washington Post, in its edition dated 27 March 1987, in an article written by Stephen S. Rosenfeld, says: 'This year, in its human rights report, the (State) Department acknowledged the persistence of "urban terrorism" in Iran: "... random bomb attacks, often perpetrated by (opposition) groups in strictly civilian and public places ..." When you ask them, American diplomats specifically place the PMOI and its offshoots among the "terrorist" opposition... Inquiries to half of a dozen State and Justice Department officials found agreement, among those who know something about it, that the PMOI is fairly designated as terrorist'.

As the crisis in the Persian Gulf escalated and the war between the allied forces and the Iraqi aggressor army started, the dirty collaboration of Mojahedin in killing and massacring Iraqi people also reached its climax. Rajavi's group joined the remaining Iraqi forces in suppressing the uprising of Iraqi people which had begun immediately after the war.

Since the acceptance of resolution 598 of the Security Council by the Islamic Republic of Iran and relative improvements in the relations between Iran and Iraq, Mojahedin, who had faced a shaky position in Iraq and their very existence was in jeopardy, took the total dependency and obedience to Saddam's regime and became an obedient tool of Iraqi armed forces: Taking part in quelling the people's uprising in which, according to some witnesses who took refuge in the north and the south-west of Iraq, they committed all kinds of horrendous atrocities such as dismembering, hanging in public, setting on fire, burying people alive, gouging out eyes, etc., and they got away ahead of the Iraqi forces in their crimes.

Rajavi's men, which were in fact viewed as guests in Iraq, never came short of committing any crime against the people of their host country. The ugly face of their crime against the post-war domestic crisis in Iraq became so evident that it soon reflected in all international circles and caused public hatred and anger against them.

Active human rights organizations and also world media devoted part of their news coverage to these events while assessing and reporting the news on the Persian Gulf crisis.

Amnesty International, in page 3 of its July 1991 report on violations of human rights in Iraq (AI Index: MDE 14/05/91), especially mentions the Mojahedin's cooperation with Iraqi forces and their participation in extrajudicial killings of Iraqi people. The Amnesty International report says: 'A number of refugees who were interviewed also stated, however, that other Arab nationals and members of the Iranian opposition group, the People's Mojahedin Organization of Iran, had also taken part in carrying out extrajudicial killings alongside the Iraqi forces'.

Senator Peter W. Galbraith, after his visit of liberated Iraqi Kurdistan on 30-31 March 1991, in a report to the Committee on Foreign Relations of the United States Senate dated 1 May 1991, says:

'Interestingly, the Kurds reported that their prisoners included more than 100 members of the People's Mojahedin, an anti-Khomeini Iranian group led by Massoud Rajavi that apparently was fighting with Saddam Hussein in Iraq's civil war'.

The English newspaper The Guardian, in its edition dated 18 April 1991, quoting one of the Kurdish militants, writes: 'Mojahedin were beasts. They had gouged out the eyes of Kurdish women and children in the town of the Karanjir not far from Kirkuk'.

This newspaper in the same report and according to one of the Kurdish pishmargas says: '... He led the unit that pushed the Iraqi army and the Iranian Mojahedin out of Karanjir. The retreating pro-Saddam forces had shot everyone and everything, including animals. They dumped the human bodies in piles. One boy aged about 12 lay separate. The bullet that killed him made a small hole in his back and blew his belly apart on its exit. He, like the rest, was eyeless'.

La Croix l'Evénement newspaper, in its edition dated 8 June 1991, wrote: 'Saddam Hussein, facing many group deserters in his armed forces, has recently created a military unit composed of foreigners to protect his regime. This unit is recruited of ... Iranian opposition, i.e. Mojahedin who are under the supervision of the officers of the Presidential Guard'. The same newspaper in the third page of the same edition calls Mojahedin 'Saddam's allies in Kurdish oppression'.

Le Point, in its seventeenth edition on 11 February 1991, page 8, says: 'Iraq intends to use some of Mojahedin members for terrorist activities outside Iraq'.

Message International, in its edition dated May 1991, regarding the cooperation between Iraqi regime and PMOI in suppressing the uprising of the Iraqi people, writes: 'The Baghdad-based Khalq's military wing, "National Liberation Army of Iran" (NLAI), has been fighting Saddam's war with the Kurds in northern Iraq. They hoped to be rewarded when Iraq could overrun Iran or destabilize the Islamic Government there'.

Le Monde, in its edition dated 16 April 1991, page 3, wrote: '... The same representative emphasized that Saddam has organized a special unit for his protection which includes ... Iranian opposition group of Mojahedin Organization'.

The Austrian newspaper Standard reported that in a Kurdish city of Chouarteh, the Kurds who were running away from Iraqi attacks, including men, women and children, were being shot by Mojahedin armed mercenaries.

The Daily Mail newspaper quoted Maryam Azodanlo, the wife of Mojahedin's leader, as saying: 'I am living to fight, I am ready to give my life for my great leader Saddam Hussein and die for his ideas'.

The Turkish media on 27 March 1991 stated Mr. Jalal Talebani, one of the Iraqi Kurds' leaders, as saying that Saddam Hussein's forces

accompanied by five thousand members of the Mojahedin Organization, armed with tanks, were ready to launch an attack on the city of Kirkuk.

Moreover, Iraqi Kurds who took refuge in the Islamic Republic of Iran said that Rajavi's armed group came to help the forces of the Presidential Guards of Iraq while they were suppressing the popular uprising and violently massacring innocent and defenceless people.

Below parts of the hostilities against the people of Iraq committed by PMOI are referred to:

- The forces of the Mojahedin Organization, after capturing the city of Solaymanieh, dismembered about fifty young women in revenge for the participation of their husbands in the popular uprising;

- In the city of Dahouk the Mojahedin forces, who camouflaged themselves as Kurds, killed more than two hundred unarmed people and looted many houses;

- In the city of Zakho two children were killed by Mojahedin forces whose relatives had made themselves active in the popular uprising. The Mojahedin distributed some leaflets in which the people have been warned against taking part in such activities;

- In the city of Arbil the Mojahedin forces tied twenty-five Kurd militants to the back of cars and pulled them on the ground;

- In Garah-Dagh, the Mojahedin tied a Kurd militant to two cars and drove them in opposite directions making the prisoner tear into two parts;

- In the district of Diana the Mojahedin beheaded ten of their prisoners and displayed their heads to people to discourage them from joining the militants;

- In Ravanduz the Mojahedin forces blocked the road to refugees leaving Iraq for the neighbouring countries. They opened fire on them, killing three hundred people;

- In Shaglaveh the Mojahedin gathered ten farmers in one village and after pouring petrol on them set them on fire;

- In Halabche the PMOI forces killed many innocent people and set on fire the agricultural lands and farms. As a result, many poultry and livestock were killed and agricultural machinery was destroyed. They warned people against any cooperation with Kurdish militants;

- In Soleymanieh, the PMOI forces, while trying to occupy the city and defeating the popular forces, drove their tanks over civilian vehicles carrying passengers.

The gradual terrorist evolution of this iniquitous and unlawful group and its dark record in violations of human rights leaves no

justification for the crimes perpetrated by this group against the Iranian and Iraqi people and humanity as a whole. The fact is that the PMOI, as a mercenary group in the hands of the Iraqi regime, has spared no efforts in resorting to terrorist activities in Iran as well as in suppressing the popular uprising of the Iraqi people during the Persian Gulf crisis, thus violating human rights, in particular the right of peoples to self-determination."

27. The Special Rapporteur attaches great importance to this communication from the Government of the Islamic Republic of Iran and considers that, given the complexity of the issues raised, the Government of Iran should provide further information, making it possible to determine whether the actions and events described, and the corresponding motives and objectives, can genuinely be considered as mercenary activities. The main factors needing to be established are: whether the individuals concerned were specially recruited; whether their participation was motivated essentially by the desire for significant private gain and prompted by the promise of material compensation substantially in excess of that paid to combatants of similar rank and functions, their nationality and place of residence and whether or not they are members of the armed forces. A distinction must also be drawn between actions carried out on Iranian territory by members of the organization concerned and those carried out on Iraqi territory, before those actions can be properly defined under existing international law on the subject.

28. The Special Rapporteur therefore hopes that more information will be forthcoming from the Government of the Islamic Republic of Iran and considers that the communication from the Iranian Government should be brought to the attention of both the Commission on Human Rights Special Representative on the situation of human rights in the Islamic Republic of Iran, Mr. Reynaldo Galindo Pohl, and the Commission on Human Rights Special Rapporteur on the situation of human rights in Iraq, Mr. Max van der Stoel, who should also be asked for their technical opinion on how to describe and define the groups and individuals involved in the illegal activities reported.

29. The Ministry of Foreign Affairs and Cooperation of the Republic of Benin, in a communication dated 11 September 1992, replied to the Special Rapporteur's request as follows:

"With reference to the Special Rapporteur's letter, I have the honour to transmit to you Order No. 78-34 adopted by Benin on 19 October 1978 concerning the criminalization and punishment of mercenary activities:

'THE PRESIDENT OF THE REPUBLIC, HEAD OF STATE AND GOVERNMENT,

Having regard to Order No. 77-32 of 9 September 1977 promulgating the Basic Law of the People's Republic of Benin;

Having regard to Decree No. 76-26 of 30 January 1976 establishing the Government, as amended by Decree No. 78-173 of 6 July 1978;

Having regard to Decree No. 76-46 of 19 February 1976, establishing the services attached to the Presidency of the Republic and determining the functions of the members of the Government, as amended by Decree No. 78-174 of 6 July 1978;

Having regard to resolution 32/14 of 15 November 1977 adopted by the United Nations General Assembly at its thirty-second session;

By decision of the Central Committee of the Benin Party of Popular Revolution;

Having heard the Council of Ministers at its meeting of 13 October 1978;

ORDERS:

Article 1

Any individual or group of individuals engaging in any of the following activities shall be guilty of the crime of mercenarism:

1. Recruiting, organizing, financing and training groups which are armed or intended to be armed against a sovereign State or national liberation movement, whether or not the groups in question are made up wholly or in part of nationals of the State against which the attack is or will be directed;

2. Joining or attempting to join such groups;

3. Supporting such groups by recruitment advertising, offers of services, or any declaration of support;

4. Employing the services of groups of this kind which have already been established;

5. Providing transport, transit or any other kind of facilities for such groups or any of their members.

Article 2

The crime of mercenarism shall be punishable by the death penalty.

Article 3

Any person having knowledge of mercenary plans or activities who fails to inform the political, military, administrative or legal authorities thereof immediately on acquiring such knowledge shall be subject to a term of hard labour.

Article 4

No extenuating circumstances or exceptions shall apply in the case of persons who have financed and/or assumed the command of mercenaries or given them orders.

Article 5

The crime punished by this order shall be tried, at the same time as all related offences, by a special revolutionary court, the organization and functioning of which shall be established by law.

Article 6

This order shall be applied as a law of the State.
Done at Cotonou, 19 October 1978'.

The provisions of this order are in line with the objectives set out in resolutions 46/87 and 46/88 adopted by the United Nations General Assembly on 16 December 1991."

30. On 17 September 1992, the Permanent Mission of the Dominican Republic to the United Nations Office at Geneva transmitted the following reply from the Ministry of Foreign Affairs of the Dominican Republic to the request for information by the Special Rapporteur:

"At the present time there are no mercenary activities on the territory of the Dominican Republic, or on the territory of other countries, which impair or might impair the sovereignty of the State or the exercise of the right of our people to self-determination."

31. In a communication dated 24 September 1992, the Permanent Mission of Tunisia to the United Nations Office at Geneva replied to the Special Rapporteur's request as follows:

"The Tunisian Penal Code punishes mercenary activities under the heading of 'crimes against the external or internal security of the State'.

Thus '... any Tunisian who, in time of war, incites soldiers or sailors to transfer their allegiance to a foreign Power, assists them in doing so, or engages in recruitment on behalf of a power which is at war with Tunisia' shall be guilty of treason and sentenced to death (art. 60 S 4)".

Any Tunisian or alien who recruits soldiers during peacetime on behalf of a foreign power on Tunisian territory shall be sentenced to five years' imprisonment (art. 61 S 3).

Anyone who assembles and arms a group or assumes the leadership of a group for the purpose of stealing public or private funds or seizing

property (...) or attacking the forces of order when the latter are taking action against the authors of such offences (...) shall be subject to the death penalty (art. 74).

These penalties shall also apply to acts committed against a Power linked to Tunisia by a treaty of alliance or an international convention having similar effect (art. 62 bis).

In 1979 the Tunisian legislator, aware of the threat to the security, territorial integrity and independence of States represented by the use of mercenaries, extended the death penalty to any Tunisian (members of the armed forces and others) who joins or recruits a third party to the army of a State which is at war with Tunisia, or who joins the side of rebels (art. 123 of the Code of Military Justice, as amended by Decree Law No. 79-12 of 1 October 1979).

Under new article 123 of the same Code, Tunisians who in peacetime take orders from a foreign army or a terrorist organization operating abroad are liable to ten years' imprisonment, as well as the loss of their civic rights and confiscation of all or part of their property, without prejudice to any penalty applicable to crimes against the security of the State and irrespective of whether the offender acted individually and without the assistance of a third party, or under instructions from such an organization.

Anyone who incites others to commit any of these crimes or in any way assists in them is liable to the same penalty.

In addition, Tunisia is a party to the OAU Convention for the Elimination of Mercenarism in Africa (Law 84-4 of 3 April 1984). By acceding to the Convention, Tunisia has undertaken to forbid on its territory the recruitment, training, financing and equipment of mercenaries and any other form of activities likely to promote mercenarism."

32. On 14 October 1992, the Permanent Mission of the Argentine Republic to the United Nations Office at Geneva forwarded the following reply from the Department of Human Rights of the Ministry of the Interior of Argentina to the request for information by the Special Rapporteur: "This Ministry has no evidence or record of the existence of any mercenary activities".

33. In his statement to the Third Committee of the General Assembly, the Special Rapporteur spoke of the substantial progress made in the process of national reconciliation in the People's Republic of Angola since the conclusion of the Estoril peace agreements between the Angolan Government and the União Nacional para a Independencia Total de Angola (UNITA) on 31 May 1992. Unfortunately, the serious events which occurred in Angola following the holding of presidential and legislative elections on 29 and 30 September 1992, and the fresh reports concerning the presence of mercenaries on Angolan territory, have obliged the Special Rapporteur to request further information from the Angolan Government. The text of the communication from the Special Rapporteur dated 17 November 1992 appears in chapter IV, section B, of this report.

## III. LOCALIZATION OF MERCENARY ACTIVITIES

34. The presence of mercenaries, or in other words professionals of warfare specially recruited to fight in armed conflicts alien to their nationality or to participate in concerted acts of violence against the territorial integrity or constitutional order of a State, is a negative phenomenon to which any country may be exposed, due to the very nature of mercenary conduct. Mercenaries act out of a desire for significant personal gain. They have an overriding willingness to hire themselves out in high-risk situations. Their involvement usually culminates in the commission of crimes and acts detrimental to State sovereignty, the human rights of the populations concerned, the constitutional stability of Governments or the right of peoples to self-determination. Their characteristics include skill and military experience, financial ambition, adventurism, dehumanization and a tendency to identify themselves with ideological options having a predominant authoritarian component.

35. Mercenaries can be of any nationality and usually offer their services from their place of residence as a result of contacts with organizations specializing in their recruitment or agents of Governments interested in undermining another Government or harming it in some way. Mercenaries are frequently used in covert operations. The Special Rapporteur must draw attention to the problem of the supply of mercenaries and the relative ease with which they can be enlisted for illegal operations. Irrespective of whether they are used to carry out or to support military operations, to commit or to repel aggression, for attack or defence or for legitimate or illegitimate causes, recourse to mercenaries is contrary to international law and has repeatedly been condemned by the United Nations as a crime causing deep concern to all States.

36. In this context, the localization of mercenary activities, as described by the Special Rapporteur in his previous reports, shows that recourse to mercenaries usually occurs in connection with an international or internal armed conflict, when one or all of the warring parties call in mercenaries to carry out their military strategy. In the context of an international armed conflict, whatever its cause and nature, mercenary activity is always an illegal act which paves the way for another act contrary to international law or the violation of principles of international law, such as the military aggression of one State against another, the invasion and occupation of its territory, armed intervention with the object of interfering in its internal affairs, or the violation of the principles of respect for the territorial integrity of States, the self-determination of peoples or non-intervention. Mercenary activities are also undertaken by third States that choose to become involved, directly or indirectly, in an international armed conflict, resorting, among other means, to the use of mercenaries.

37. Large-scale mercenary activity usually occurs in connection with armed conflicts involving the exercise of a people's right to self-determination. In the 1960s, in the context of African decolonization, the active presence of bands of mercenaries was a means used by colonial interests wishing to remain in the region, to impede the process of self-determination which was leading to the emergence of new African States or to foster situations of aggressive

destabilization, where the mercenary component was essential to the intensification of the armed conflict and its internationalization.

38. An attack on the exercise of the right to self-determination could perhaps be called the typical circumstance in which mercenaries are resorted to. In this case, a State enters into an armed conflict with another State, disregarding the right of its people to self-determination and its territorial sovereignty. The aggressor State becomes involved in mercenary activities, resorting to the recruitment, financing, use and training of mercenaries, in order to attack the other State party to the conflict, thus strengthening its own military capacity or avoiding greater military losses.

39. The practice of resorting to mercenary activities, which is now widespread, is not confined to international armed conflicts. The evidence presented in previous reports shows that, in internal armed conflicts and "low-intensity wars", mercenaries are active on one side of a conflict and sometimes on both sides. This is because, in general, such conflicts are linked not only to social relations, economic interests or strictly internal political tensions. Interdependence is a fact of contemporary society, as was the existence of international power blocs until very recently. In this context, it has not been unusual for some of the parties to an internal conflict to resort to "international aid", which used to be forthcoming in the seemingly less compromising form of funds for the recruitment and financing of bands of mercenaries.

40. There are complex cases in which the allegation that mercenaries were used in internal conflicts could not be verified because the proper information channels were lacking and because the official sources maintained a stubborn silence when questioned about the presence of mercenaries. The Special Rapporteur has thus far been unable to verify the presence of mercenaries in internal armed conflicts with international aspects and ramifications such as those in Afghanistan, Chad, Lebanon and the Sudan, among others.

41. The third form of mercenary activity is that resorted to by third States intervening in an internal armed conflict in order to further their own interests. This has been the most common form of mercenary activity in Africa in recent years. Indeed, the internal conflict in Mozambique had a mercenary component, in that a third power in the region, South Africa, took part in it.

42. The presence of mercenary activity in internal armed conflicts is indicative of the development, mobility and capacity for adaptation of this type of illegal activity. Diverse political, ideological, economic or strategic security interests and the advantage of not appearing to be directly involved have led third States to encourage mercenary activities through covert operations or via one of the parties to the conflict.

43. The Special Rapporteur has noted that the practice of resorting to the recruitment, use and financing of mercenaries serves the political, ideological, economic or strategic security interests of third States which do not wish to appear to be directly involved in a conflict. There is some evidence that, in order to preserve their image as States which abide by international laws, third States encourage mercenary activities through covert

operations or via one of the parties to the conflict, so that the latter may be seen as the one directly recruiting and employing mercenaries. These illegal activities are resorted to in this manner when a third State deems it advantageous to assist a party to the conflict.

44. A fourth form of mercenary activity can be observed when a third State resorts to the use of mercenaries in order to violate the sovereignty and the self-determination of peoples who are fully exercising both rights. This is what occurred, for example, when previous South African Governments used mercenaries to resist the exercise by the peoples of Botswana, Lesotho, Seychelles, Swaziland, Zambia and Zimbabwe of their right to self-determination.

45. This does not mean, however, that mercenary activities are resorted to only in armed conflicts. It has recently been shown that such activities may also occur in isolation in association with international crimes or relatively unpredictable changes in the internal circumstances of a State or the international situation. As has been pointed out, there are mercenary resources and organized groups available to undertake mercenary activities which have diverse immediate objectives, for example, reinforcing insecure political interests, assisting or impeding the actions of opposition groups, and even engaging in actions which are in themselves unlawful and prohibited, including terrorist acts, drug- and arms-trafficking operations, and paid assassinations.

46. In his report to the General Assembly (A/47/412, annex, para. 46), the Special Rapporteur referred to illegal international activities in which arms- and drug-traffickers, and irregular armed groups practising terrorism, join with mercenaries in committing violent acts undermining the constitutional order of States. The information received by the Special Rapporteur confirms that, by various means, these groups support one another and do one another favours, adversely affecting, by their violence, both a given country or people and the international community as a whole.

47. The Special Rapporteur wishes to place on record his concern at the intensification of some internal conflicts and the emergence of others during 1992. Among the former, mention should be made of the conflict in the Philippines which has been going on since 1969 between the Government and armed forces of that country and the self-styled New People's Army of the National Democratic Front; the conflict in Myanmar, involving the National League for Democracy, the Karen guerrilla movement and the Rohingyas guerrilla movement of the Muslim community; and the conflict in Sri Lanka, between the Government and armed forces of that country and the self-styled People's Liberation Organization of Tamil Ealam (PLOTE), in which more than 5,000 people have already been killed and injured. The emerging conflicts include the one in Moldova between the Government and the Russian-speaking secessionist forces of the Trans-Dniester Republic which, during 1992, led to the bombing of the cities of Bendery, Grigariopol and Dubossary and the conflicts in Georgia, South Ossetia and, within the Russian Federation, in Checheno-Ingushetia.

48. While these conflicts remain purely internal, unless they are quickly resolved, with prospects for peace, there is a very high risk that mercenary

activities may be resorted to. In his previous report to the Commission on Human Rights (E/CN.4/1992/12, para. 48), the Special Rapporteur noted that at least two mercenaries of French nationality had taken part in the conflict in Myanmar, fighting on the side of the Karen rebel movement, that a United States mercenary had participated in mercenary recruitment operations in the Philippines in May 1990, and that mercenaries of Israeli nationality had provided military training in Sri Lanka. The Special Rapporteur has recently been informed that a citizen of the Russian Federation was executed at Abkhazia, Georgia, in November 1992 after being charged with mercenary activities and sentenced to death by a court martial. The intensification of internal conflicts, as experience shows, heightens the risk that the recruitment, financing and use of mercenaries may be resorted to.

49. The motives of mercenaries may vary: the mercenaries may be ex-servicemen with a compulsion to make war, fanatical adherents of an ideology incompatible with democratic tolerance, or inherently intolerant people or groups. In every case, however, although this is habitually denied, venality and the professional practice of war are invariably concomitant features of the personality found among those foreigners who plan and execute mercenary activity.

50. The five forms of mercenary activity to which reference has been made in the present section can be undertaken by nationals in their own country; in this case, however, their behaviour does not constitute mercenary activity, but criminal acts liable to prosecution under the penal codes embodied in the internal laws of each country. According to international norms in this area, in order for an offender to be defined as a mercenary he must be an alien. It should be noted, however, that drug- and arms-traffickers, terrorists and mercenaries tend to act as international gangs which are interrelated. Thus, an irregular armed group which practises terrorism can quickly turn into a mercenary group by moving to the territory of an adjoining State in order to provide cover and protection for a gang of drug-traffickers, or to occupy a portion of foreign territory, wresting it from the authority of the sovereign State.

## IV. MERCENARY ACTIVITIES IN AFRICA

### A. General aspects

51. The Special Rapporteur has focused particularly on monitoring the political situation in Africa in so far as it relates to the exercise of the right of its peoples to self-determination and to respect for the sovereignty and territorial integrity of African States. Mercenary activities were one of the means used in the continent to prevent the gradual emergence of new sovereign and independent States. In various parts of the continent internal conflicts were fomented during which mercenaries were recruited, used, financed and trained.

52. Over the past 20 years, young African countries have suffered attacks against the self-determination of their peoples and the territorial integrity of their States. Mercenaries were expressly recruited for those attacks and they often acted with extreme cruelty, violating the fundamental rights of the affected populations. Angola, Benin, Botswana, the Comoros, Lesotho,

Mozambique, Namibia and Zimbabwe were among the countries that suffered mercenary attacks whose objective was always to impede self-determination, destabilize established Governments and subject them to the control of a regional power. The racist element and support for the apartheid system were among the main characteristics of mercenary activities in these countries.

53. While the white minority in South Africa has recently made some meaningful legal and political changes in the apartheid regime, it is a fact that throughout the previous two decades, the Governments of South Africa encouraged situations of violence and military tension in southern Africa with their acts of aggression against the right of the peoples of the region to self-determination, in pursuit of their political interests of social, economic and strategic domination. In keeping with its policy of provocation and hostility, South Africa illegally retained control over Namibia until 1990 and, both directly and through the use of mercenary forces, instigated conflicts or engaged in acts of terrorism and sabotage in the territories of Botswana, Lesotho, Swaziland and Zimbabwe, and ordered commando raids in Zambia. With the aim of maintaining the apartheid regime, which in itself constitutes a violation of the fundamental human rights of the South African people and a crime against humanity, it ordered various attacks against the leaders of African national liberation movements, some of which were carried out by mercenary agents in European countries.

54. Some of the internal conflicts, such as the ones in Angola and Mozambique, are on the way to being resolved. In other cases, the intensity of the internal conflicts has lessened and mercenaries are to be found there less frequently or not at all. In fact, mercenaries never act on their own but rather as agents of the power or power groups which recruit them. When military conflicts lessen in intensity or cease altogether, mercenaries redeploy to other locations. Some of them have redeployed to South Africa where, amidst contractions, de jure progress and de facto relapses, attempts are being made to consolidate the policy of dismantling apartheid promoted by President Frederik De Klerk. This process, however, is a complex one and is being resisted by racist organizations which, with the avowed intent to paralyse and boycott the process, have recruited mercenaries and set up paramilitary groups which actively provoke acts of racist violence and even of fatal clashes between the different ethnic groups in South Africa.

55. In addition to noting the establishment of armed groups to combat African national liberation movements and to destabilize legitimate Governments in the region, the Special Rapporteur cannot but express his concern over the recrudescence and intensification, in some cases, and the persistence, in others, of various internal conflicts on the continent. The clashes in Burundi left over 3,000 dead in 1991. In Cameroon, in February 1992 alone, clashes between rival Muslim tribes in the north of the country led to more than 100 deaths. In Chad clashes with rebel forces loyal to the deposed President Hissène Habré continued during 1992. In Djibouti, there has been fighting between the Afars, grouped together in the so-called Front for the Restoration of Unity and Democracy, and the Issas. The Niger is faced with the rebellion of the Tauregs, and in Nigeria violent clashes have opposed the Tiv and Jukun ethnic groups. In Rwanda, an insurgent movement is active, while every day the war between clans and sub-clans in Somalia takes the lives of 500 children who have no means of gaining access to humanitarian assistance

and consequently die of hunger. Togo is facing a delicate situation as a result of inter-ethnic conflicts, while in the Sudan, a war is being fought between the Sudanese army and the organization that has proclaimed itself to be the Sudanese People's Liberation Army. That conflict has affected the city of Bor. While these conflicts have remained largely internal, failure to resolve them soon and in ways that bring an expectation of peace would create a serious risk of seeing the appearance of mercenary activities, which are offences of deep concern to all States in the international community and in the African continent in particular.

56. The Special Rapporteur also devoted particular attention to the situation in Zaire, a country which during 1991 experienced bloody clashes, looting and severe repression. The Special Rapporteur has received complaints that mercenaries participated in several of those disturbances, in some case instigating them and in others actively participating in the commission of criminal acts. Some mercenaries, wearing unofficial commando uniforms, are reported to have sown terror in the streets of Kinshasa during the nights of 23 and 24 September 1991, and in Lubumbashi during the day on 21 and 22 October 1991. These mercenaries were reportedly neither arrested nor brought to trial. Towards the end of 1991, some of the nearly 6,500 members of the Special Presidential Division participated in the commission of grave acts of violence, pillage and looting against the Zairian population. In February 1992, 2,000 Zairians sought refuge in Uganda, fleeing, according to their testimony, from acts of rape, robbery and pillage perpetrated by military and paramilitary groups.

57. On 16 February 1992, the Zairian Minister of Information, Kitenge Yezu, disclosed that at least 13 persons had been killed in Kinshasa by security forces quelling a demonstration in favour of democratization. The Zairian Human Rights League, for its part, reported that 32 people, including children, had been killed and 100 others had suffered gunshot wounds. The National Sovereign Conference, the only possible conduit towards democratization of the country and a return to stability, was suspended in January 1992 by the then Prime Minister, Nguza Karl Bond, who felt that its deliberations were deepening the divisions among the country's ethnic groups. However, it was subsequently reconvened and on 30 July 1992 a global political agreement was reached on the transition to democracy.

## B. Angola

58. The Special Rapporteur has dealt in all his previous reports with the situation in Angola, in view both of the conflict between that country and South Africa on its southern border with Namibia and the internal armed conflict that it has been experiencing since its independence in 1975 because of the hostilities between the União Nacional para a Independênceia Total de Angola (UNITA) and its Government. The active presence of mercenary groups was noted in both conflicts. In 1988, the Special Rapporteur paid a visit to Angola in order to obtain first-hand knowledge of the situation. Thereafter the situation evolved favourably towards peace, and on 31 May 1991 a comprehensive peace and national reconciliation agreement was signed by the President of Angola, José Eduardo dos Santos, and the head of UNITA, Jonas Savimbi at the headquarters of the Ministry of Foreign Affairs of Portugal.

59. The Special Rapporteur's report to the Commission on Human Rights at its forty-eighth session (E/CN.4/1992/12) provided extensive and chronologically ordered information on the armed conflict which for many years affected Angola (paras. 64-81). As is well known, this conflict lasted more than 16 years and caused great destruction in a country which had recently attained its independence and which had excellent prospects for development. The Peace Agreement of 31 May 1991 set in motion a process of pacification which, despite certain delays in the schedule for its application due to accumulated mistrust, was substantially complied with by both parties and culminated in the general presidential and legislative elections held on 29 and 30 September 1992 in the presence of United Nations observers, which were intended to mark the start of the democratic normalization of Angola.

60. In this context of pacification and democratic normalization, the Special Rapporteur, in agreement with the Minister for Foreign Affairs of Angola, cancelled a further visit that had been scheduled to that country in view of the fact that, as was stated by the Minister in his communication of 4 June 1992, "there is no longer any scope for mercenarism as a phenomenon in the People's Republic of Angola" (A/47/412, annex, para. 25). The Special Rapporteur indicated that he was agreeable to cancelling the visit or at any rate rescheduling it for after the general elections, when it might make a significant contribution towards hastening the process of pacification, reconciliation and democratization in Angola.

61. In his oral statement to the Third Committee of the General Assembly on 13 October 1992, the Special Rapporteur said that "now that mercenary activity in Angola has ceased and multi-party elections have been held, the Angolan matter is concluded as far as the scope of your mandate is concerned. Therefore, unless there are any new complaints, this is a matter which has been terminated from the standpoint of the assignment received".

62. Clearly, violent acts subsequent to the elections have seriously endangered the peace achieved in the country, and threaten to revive the internal conflict. Initially UNITA rejected the election results and demanded, to the accompaniment of violence, that the alleged victory of its leader, Jonas Savimbi, should be recognized. Forces loyal to the Government responded with violence of their own, and weapons were even distributed to civilians. Fierce fighting occurred in Benguela, Caxito, Huambo, the port of Lobito, the outskirts of Luena, Malange, Port Quipiri and Lubango, while clashes in the capital, Luanda, claimed the greatest number of casualties. Hundreds of innocent civilians were killed by UNITA's indiscriminate attacks and two of this organization's main leaders, Jeremias Chitunda and Elias Salupeto Pena, died in Luanda, where a number of UNITA premises were destroyed or set on fire.

63. Alarmed by these events and by fresh information received, as well as by international press reports, the Special Rapporteur sent a letter to the Minister for Foreign Affairs of the People's Republic of Angola on 17 November 1992, the text of which is reproduced below:

> "I have recently received reports of serious events occurring in the People's Republic of Angola following the presidential and legislative elections of 29 and 30 September 1992. According to

international press reports, people have been killed in fighting in various provincial towns and there has been considerable damage in Luanda. More than 1,000 persons reportedly died in early November during three days of clashes in Huambo, Benguela, Malange, Porto Quipiri, Lubango and the port of Lobito.

Non-governmental sources have reported the presence of a large concentration of mercenaries in Angolan territory, close to the border with Zaire. These sources have also reported that up to 10 aircraft flying in from abroad have made clandestine landings every day in Mucusso and Jamba.

In this connection, I wish to express my profound concern at the above-mentioned reports. I would appreciate it if your Government would provide me with information on the present situation in Angola and on the possible existence of mercenary activities on its territory, in violation of Angola's sovereignty and laws and the Estoril Peace Agreements.

In conclusion, I would like to express the hope that Angola will return to the path of peace and development that it has been following for the past 16 months."

64. On the date of completion of the present report (12 December 1992), the Special Rapporteur was still awaiting a reply from the Government of Angola.

65. The Special Rapporteur hopes that the tense situation in Angola will be rapidly resolved through political negotiations and the strengthening of the democratic system, and once again pledges his cooperation in avoiding a return to a situation of hostilities which would revive the possibility of interference by mercenary forces. He also reiterates his willingness to go back to Angola, in compliance with the mandate conferred on him by the Commission on Human Rights, should the Government of that country deem such a visit appropriate and extend the relevant invitation.

## C. Liberia

66. In a note verbale dated 20 September 1991, the Ministry of Foreign Affairs of the Republic of Guinea informed the Special Rapporteur that "the south-west of Guinea has experienced some very flagrant violations in 1991 by armed men of the Liberian rebel faction led by Charles Taylor. These repeated incursions have left victims among the border populations. During these offensives the rebels have torn down and burned the Guinean national flag". The communication went on to say that

"After the attacks by Charles Taylor's mercenaries on the region of the Republic of Guinea that borders Liberia, it was the turn of the Republic of Sierra Leone to undergo attacks by these mercenaries. It goes without saying that these acts are flagrant and repeated violations of the sovereignty of the States attacked and of the right of their peoples to self-determination. The peoples of Liberia, Guinea and Sierra Leone have always had close and fraternal relations, as attested by the bilateral

and trilateral agreements concluded among their respective Governments. There is no doubt that this conflict is undermining peace and security in the West African subregion".

67. The Special Rapporteur noted with concern the epithet of "mercenaries", which the Guinean Government applied to the Liberian rebel forces led by Charles Taylor, and therefore asked the Government of Guinea for further information on the reported mercenary nature of the forces and for other information relating to the reported attacks. The second paragraph of the letter from the Special Rapporteur read as follows:

"I should be grateful if you could provide me with more detailed information concerning the circumstances, dates, places and victims of these aggressions, the damage caused by them, and in particular, the mercenary nature of the forces of Mr. Charles Taylor which you refer to in the above note".

68. In a telephone communication dated 3 December 1991, the Government of Guinea informed the Special Rapporteur that "the incursion by Mr. Charles Taylor's troops into the Republic of Guinea occurred on 28 and 29 January 1991 at 9 a.m., in the village of Kobolvita, Bokoni District, Macenta Prefecture, located in the south-west of Guinea. Three people were killed and one wounded in the attack, and 3 houses, 11 huts and the national flag were burned".

69. On 3 November 1991, Charles Taylor, Chairman of the National Patriotic Front of Liberia (NPFL), accused the Government of Sierra Leone of giving refuge to former soldiers of President Samuel Doe and allowing them to launch attacks against his forces from its territory. Starting in March 1991 NPFL troops made successive incursions into the east and south of Sierra Leone. On 27 November 1991 they captured the town of Daru, forcing its inhabitants to flee to Kenema, and seized the bridge over the river Mano, which forms part of the frontier between the two countries.

70. On 20 December 1991, the Acting President of Liberia, Amos Sawyer, speaking in Monrovia, charged that Charles Taylor's forces were composed of "mercenaries, gangsters, crooks and bandits" whose aim was "deliberately to destroy the Liberian nation and people". He went on to say that the town of Man, Côte d'Ivoire, had become a main transit centre for weapons and munitions intended for Taylor's forces, and also accused the Government of Burkina Faso of allowing members of NPFL to use its territory to obtain weapons. Subsequently, on 12 February 1992, the Presidents of Guinea, Liberia and Sierra Leone, meeting in Freetown, expressed their grave concern regarding the commercial transactions of certain western firms with NPFL, which provided it with the necessary financial resources to continue the war.

71. In 1992, Liberia was divided in two: the capital Monrovia, under the control of the interim government headed by Amos Sawyer, was cut off from the rest of the country, which was controlled by Taylor's forces. The Economic Community Monitoring Group (ECOMOG) controlled only the area around Monrovia, because NPFL was opposed to the group's presence in the rest of the country.

72. On 29 April 1992, Amnesty International reported that in the areas where there had been clashes with Taylor's forces, the army of Sierra Leone had set up irregular courts which were issuing summary death sentences against persons suspected of collaborating with members of NPFL, who were also reported to have committed grave violations of human rights. In November 1992, Amnesty International reported that some 300 Liberian citizens taken captive during attacks by the NPFL against villages located in south-eastern Sierra Leone had died in Pademba Road prison in Freetown as a result of torture, ill-treatment, malnutrition and disease.

73. On 15 October 1992 Charles Taylor's forces laid siege to Monrovia and endeavoured to expel the Economic Community Monitoring Group from the capital. On 7 November 1992 eight West African Presidents meeting in Abuja, Nigeria, declared a cease-fire applicable to all parties to the conflict and effective as from midnight on 10 November 1992. They simultaneously ordered that all the factions involved in the conflict be assembled and disarmed. The ECOMOG forces were charged with ensuring compliance with the cease-fire and with the other measures adopted at the presidential meeting.

74. The Special Rapporteur deems it worth pointing out that, although the Liberian war is essentially an internal armed conflict between Taylor's NPFL forces and those of the Acting President Amos Sawyer, and the United Liberation Movement (ULIMO), the events of the last two years have demonstrated that there is a real danger of it becoming international and involving the States of Guinea and Sierra Leone on the one hand, and Burkina Faso and Côte d'Ivoire on the other, and a related danger of further recourse to mercenary activities. Accordingly, the Special Rapporteur repeats the suggestion made in the report submitted by him to the General Assembly (A/47/412, annex; para. 70) that ECOMOG forces must be permitted forthwith to carry out the task for which they were sent to the country, and must also be permitted to move freely throughout the national territory and to supervise the prompt assembly, disarmament and demobilization of the three opposing forces.

75. As indicated in paragraph 19 of this report, on 9 July 1992 the Ministry of Foreign Affairs and cooperation of the Republic of Guinea sent a further note to the Special Rapporteur stating inter alia, the following:

> "If mercenaries are deemed to be persons recruited to fight in an armed conflict who have greater material advantages than those of the regular combatants and are not nationals of one of the parties in conflict, then the Republic of Guinea has no comment to make, inasmuch as there has been no report in Guinea or in the subregion of activities of mercenaries that are impairing the sovereignty of the Republic of Guinea or of any of the countries of West Africa, and the exercise of the right of peoples to self-determination".

76. In the light of this statement, the Special Rapporteur considers that one the basis of new criteria, the Government of the Republic of Guinea has reconsidered the opinions and statements expressed by it in its note verbale of 20 September 1991, in which it described the Liberian rebel faction lead by Charles Taylor as being composed of mercenaries.

77. Lastly, in view of the current evolution of the conflict in Liberia and the siege affecting its capital, Monrovia, since 15 October 1992, the Special Rapporteur deems it necessary to draw attention to the peace initiatives made by the eight Presidents of the West African Subregion and the need to observe fully the cease-fire agreed upon, and to progress towards the assembly and subsequent disarmament and demobilization of the opposing forces. In this respect, the strengthening of the Economic Community Monitoring Group and the possible application of economic sanctions to the opposing forces may prove to be effective instruments that would contribute to ending the war and bringing about a negotiated political solution to the conflict. Only thus will it be possible to establish the necessary bases for the Liberian people to be able to exercise its right to self-determination fully, initially through democratic, multi-party and representative elections, while at the same time preventing the presence, use and financing of mercenaries alien to the hopes for peace and development of the peoples of West Africa.

## D. Mozambique

78. In his previous reports the Special Rapporteur dealt at length with the situation in Mozambique which, since its proclamation of independence in 1975 has been experiencing a grave internal conflict which finally seems to be heading towards the implementation of peace accords to stabilize the country. The Frente de Libertaçao de Moçambique (FRELIMO), which has been running the Government since 1975, was facing armed opposition from the Resistencia National Mozambicana (RENAMO). In the course of the internal conflict, RENAMO obtained assistance, firstly, from the racist regime of Rhodesia - before that country became the sovereign State of Zimbabwe - and then from the Government of South Africa. In the context of this assistance, the territory of Mozambique has experienced a number of attacks which have been attributed to groups of mercenaries, who were brought into the internal conflict to strengthen the military capacity of the sectors which opposed the FRELIMO Government.

79. In a communication dated 8 November 1991 from the Permanent Representative of Zimbabwe to the United Nations Office at Geneva addressed to the Special Rapporteur, the Government of Zimbabwe mentioned that the intelligence service of the former Rhodesia had participated in the creation of RENAMO to retaliate against the Government of Mozambique for permitting the Zimbabwe African Liberation Army (ZANLA) to have bases in Mozambique from which to conduct the liberation struggle. He also mentioned that the South African Defence Forces (SADF) had participated in the training, in southern Transvaal, of a number of mercenaries who subsequently joined RENAMO.

80. According to the communication from the Government of Zimbabwe RENAMO elements assisted by mercenaries working for SADF, also engaged in economic warfare against Zimbabwe, attacking the Beira-Mutare oil pipeline on at least 127 occasions between 1982 and 1990 and destroying fuel storage tanks in the port of Beira. RENAMO attacked the Beira-Mutare railway line, which provides a direct link between Zimbabwe and the Indian Ocean, on 292 occasions between 1986 and 1991. During that same period, traffic on the adjacent highway linking Beira to Mutare was ambushed on 372 occasions.

81. On 10 December 1991, 61 civilians were killed in a RENAMO attack on the town of Angoche in the north, as were 10 of the attackers. On 21 December 1991, RENAMO forces occupied the town of Namarroi in the province of Zambezia where a development project funded by a British foundation was being executed. On 1 February 1992, members of RENAMO were reported to have executed 15 people near Xai-Xai in the southern province of Gaza, using axes, knives and garrotes. The Mozambique army, for its part, is reported to have killed 160 members of RENAMO in January 1992 in a number of counter-insurgency operations carried out throughout the country. At the end of February 1992, RENAMO launched a new military offensive. On 6 August 1992, members of RENAMO attacked a town in the interior, killing nine people, and derailed a train. Three days later they killed five people and kidnapped almost 100 in a suburb of Maputo.

82. Peace negotiations began in 1989. As a result of mediation by the President of Zimbabwe, Robert Mugabe, and the President of Kenya, Daniel Arap Moi, initial, indirect contacts were made between the Government of Mozambique and RENAMO. In December 1989, both Heads of State believed that the time was ripe for the initiation of direct negotiations between the two parties. Thus, the first official meeting since the beginning of the conflict between a representative of the Government and a representative of RENAMO was held in Lisbon on 15 May 1990. Subsequently, both parties requested Italian mediation, which led to the opening of negotiations, as a result of which a partial cease-fire agreement was reached in Rome on 1 December 1990.

83. Under the Rome Accord, RENAMO undertook to respect a cease-fire in the Limpopo and Beira corridors linking the Mozambican ports of Maputo and Beira with Zimbabwe. Another major corridor, the Nacala-Malawi corridor, which links the northern Mozambican port of Nacala with Malawi, was not mentioned in the Accord.

84. During the Rome negotiations, each party recognized the right of the other to exist. On 20 December 1991, both parties stated that they favoured the simultaneous holding of presidential and legislative elections under the supervision of observers from the United Nations and the Organization of African Unity, although no specific agreement was signed on the matter. On 12 February 1992, the Ministry of Foreign Affairs of Italy announced that Italy would no longer act as mediator, as it had done during the first phase of the negotiations, and would instead act as official observer of those negotiations together with Portugal. The Government of Mozambique reportedly requested that the United States of America, France and the United Kingdom should also act as official observers. On 10 December 1991, the parliament of Mozambique unanimously approved the Universal Declaration of Human Rights.

85. Within the context of this peace process the Government of Mozambique has taken some steps towards democratization. FRELIMO has abandoned its Marxist-Leninist ideology and condemned the one-party system, and the Government has also adopted a number of measures to liberalize the country's economy. While these decisions have been taken unilaterally, they have been formulated with the aim of easing negotiations with RENAMO and as important elements for a democratic opening.

86. On 5 August 1992, talks began in Rome between the President of Mozambique, Mr. Joaquim Chissano, and the leader of RENAMO, Mr. Alfonso Dhlakama, in the presence of the President of Zimbabwe, Mr. Robert Mugabe, and of the Ministers for Foreign Affairs of Botswana and Italy, with a view to resuming the process of negotiations to reach a just and lasting peace. On 7 August, both parties signed a joint declaration undertaking to sign a definitive peace agreement by 1 October 1992. That was the first time the President of Mozambique and the leader of RENAMO had met since the country declared independence in 1975. The two parties also signed partial agreements guaranteeing security in the Beira and Limpopo corridors and establishing that pluralistic and representative elections would be held.

87. On 4 October 1992 an Overall Peace Agreement was signed in Rome. Recent reports indicate that the Agreement is being implemented and that talks have even begun between both parties for the purpose of assembling 61,000 members of the Armed Forces and 21,000 members of RENAMO at assembly points where they will be demobilized by mid-April 1993. A new and smaller National Army of Mozambique of 30,000 men is to be made up of personnel from both sides.

88. The protracted civil war has transformed Mozambique into one of the poorest countries in the world and left more than 500,000 people dead. More than one third of the country's population are refugees or displaced persons: 1,600,000 Mozambicans have sought refuge abroad and 5.6 million have been compelled to move to other parts of the country. In addition, more than 500,000 children aged under 5, who would nowadays be alive were it not for the conflict, have died, as well as numerous victims of hunger and malnutrition. The presence of mercenaries in the country has brought in its wake the violation of the human rights of numerous Mozambican citizens and has been used as a means of undermining the right of the Mozambican people to self-determination. The Special Rapporteur has informed the Government of Mozambique of his interest in visiting the country within the scope of his mandate, so that his first hand comments may contribute to strengthening the support of the international community for the implementation of the Peace Agreement, the exercise of self-determination, the consolidation of democracy and the full enjoyment by the people of Mozambique of their human rights.

## E. South Africa

89. In all his previous reports the Special Rapporteur has referred to the conflicts in southern Africa and to the relationship that exists between them and the policy of apartheid pursued by previous Governments of South Africa. In those conflicts the mercenary component has played a key role in impeding the enjoyment of human rights and the exercise of the right to self-determination of the peoples of that region of Africa. At the same time, the earlier reports have made ample reference to the struggle of the South African majority to liquidate the regime of racial segregation. Throughout recent years the African National Congress (ANC) has been the principal orchestrator of the South African people's resistance and its struggle for freedom and equal rights, and it has suffered intense persecution as a result. It was proved that mercenary groups were responsible for acts of repression against ANC leaders and for massacres carried out in suburbs inhabited by the black majority. In his previous report to the Commission on Human Rights (E/CN.4/1992/12), the Special Rapporteur referred to the unlawful

activities carried out by the Civil Cooperation Bureau (CCB), a unit of the SADF Special Forces, the so-called "Unit C-1", a South African police squad based at Vlakplaas, and the Security Department of the Johannesburg City Council.

90. There have been numerous reports of crimes against South African nationals belonging to the majority population, and on various occasions evidence of the involvement of mercenaries has been put forward. Thus, the Special Rapporteur was informed that in 1986 a mercenary who was a national of New Zealand attempted to place a bomb in the residence of Thabo M'Beki, the ANC Information Director in Lusaka. On being arrested, he confessed that he had been acting on behalf of the Government of South Africa, and was sentenced to 18 months in prison. Furthermore, Herman, a Swedish mercenary, revealed to ANC representatives in Zimbabwe that those responsible for the murder of Dulcie September, the ANC representative in France, Luxembourg and Switzerland, which occurred in Paris on 29 March 1988, were mercenaries.

91. Since Frederik De Klerk took over as President the Government of South Africa has taken a markedly reformist turn, initially aimed at a certain liberalization of policies and subsequently a gradual process of dismantling the apartheid regime and replacing it by an open and democratic political, social and economic organization. The report of the Special Rapporteur to the forty-eighth session of the Commission on Human Rights (E/CN.4/1992/12, paras. 124 and 125) refers to the repeal of the Land Acts, Group Areas Act and Population Registration Act and the amendment of the Internal Security Act of 1982. In December 1991, the Convention for a Democratic South Africa, brought together 19 political parties, 17 of which adopted a "Declaration of Intent" regarding the establishment of a democratic and non-racial South Africa, defining the general principles of the future constitution. However, the constitutional negotiations were broken off when the Boipatong massacre took place, as the ANC refused to continue the negotiations until the Government complied with certain conditions considered essential by ANC.

92. It is important to emphasize that, as a result of anti-apartheid reforms which have been undertaken, commissions have been established to investigate the crimes committed by members and specialized agencies of the South African Defence Forces and the police. As stated in previous reports and as the investigating commissions have established, mercenaries did participate in the implementation of apartheid policies and they were entrusted with the most violent actions. The Civil Cooperation Bureau has recently been condemned by a judicial commission for having ordered the assassination of anti-apartheid activists and other persons perceived to be enemies of the State. According to recent reports that unit is still carrying out unlawful activities through front entities and firms. Ben Conradie, former director of a military intelligence agency, stated to the South African daily, The Weekly Mail, that SADF had carried out a number of unlawful activities through such entities as the firm Eduguide CC or a network of entities under the umbrella organization Adult Education Consultants of Pretoria. It has also been alleged that members of the South African security forces have provided military training to members of the Inkatha Freedom Party through covert operations and that they have fomented violent clashes between members of that organization and those of ANC.

93. The earlier reports also stated that groups of whites, extremist supporters of apartheid, have been organizing to resist the measures to eliminate the racist regime, including by calling violent means. Thus while the Government of President De Klerk has been working to ease political tension, negotiating with the ANC, working for peace agreements (14 September 1991) among the main political and trade union groups, and even encouraging the creation of a national committee for peace and the convening of a Convention for a Democratic South Africa, and has persuaded Parliament to repeal the three Acts which constituted the pillars of the apartheid regime, a part of that same white minority from which the Government is constituted refuses to acknowledge the end of the racist regime which benefited whites by giving them absolute and exclusive privileges.

94. These groups, as is well known, set up paramilitary machinery with mercenary components for the purpose of "fighting for the survival of the white people" and they quickly moved on to violent action. For that reason, notwithstanding the determined effort of President De Klerk's Government to move ahead, it was caught in these contradictions which have not only impeded the fluidity of the anti-apartheid process but also threaten to paralyse it.

95. The Conservative Party and the Afrikaner Resistance Movement (AWB) refused to attend the Convention for a Democratic South Africa held in December 1991. On 28 January 1992, 10 AWB leaders were arrested by the police in connection with participation by members of that organization in an armed clash in 1991 that left 58 people wounded. In 1992, the racist groups carried out a campaign of terrorist attacks on multiracial schools, trade unions and courts. On 22 April 1992, the leader of one of those groups, Robert van Tonder, asserted in Johannesburg that armed struggle was the only way of ensuring freedom for the Boers. On 14 March, 40 racist organizations, including the Conservative Party, the AWB and the National Reform Party (HNP), signed an agreement to overthrow Mandela and De Klerk. It should also be noted that the self-styled World Apartheid Movement hired and used the services of the Belgian mercenary Jean Bultot as a weapons instructor.

96. In March 1992, as a way of breaking the deadlock and overcoming the racist organizations' opposition by strengthening his position, President De Klerk called a referendum among the white minority to find out whether it supported continuation of the reform process aimed at creating a new constitution through negotiations. The result was favourable to De Klerk, who thus increased his political capacity to negotiate agreements between the various organized sectors of society, particularly the political organizations. However, the referendum failed to resolve issues relating to the negotiating procedure and gave rise to proposals unlikely to promote consensus. The ANC submitted its project for a constituent assembly, according to which the reforms should proceed from a 400-member assembly elected on the basis of proportional representation and universal suffrage. The Government, however, has not accepted that proposal.

97. There is a direct link between the slowness and certain difficulties of the process of democratizing the country and dismantling apartheid and the type of democracy that is really wanted in South Africa. That explains why clashes and violence continue to occur. The incident with the most serious consequences for the negotiations was the massacre at Boipatong in the suburbs

of Johannesburg on 17 June 1992. Outwardly that massacre, in which at least 42 people died, had the appearance of a communal clash, but reports speak of instigation by violent white groups and mercenaries. The consequence of these events was an immediate refusal by the ANC to continue negotiations with the Government, which it accused of being two-faced and of failing to take a firm stand against apartheid and for democracy. President De Klerk said in turn that ANC was sabotaging the negotiations and wanted to take power by confrontation and mobilization; he also denied that the Government, the police or the armed forces were in any way responsible for instigating acts of violence. On 5 August 1992, following a two-day general strike called by ANC, the Congress of South African Trade Unions (COSATU) and the Communist Party (SACP), there were major peace and democracy demonstrations in Pretoria and other South African cities.

98. In this situation, the Special Rapporteur feels that there is a need for close monitoring of developments in South Africa, since there is an obvious risk of greater violence, in which the presence and use of mercenaries could make matters worse. Moreover, there is a further clear risk: a risk not only of paralysis of the process of dismantling apartheid but of strengthening of the support for return to an even harsher apartheid system. In these circumstances, the Special Rapporteur has written to Mr. Pik Botha, the Minister for Foreign Affairs of South Africa, pointing out to him the usefulness and desirability of a visit by the Special Rapporteur to South Africa to observe the investigations in progress and contribute towards the definitive elimination of use of mercenaries and towards the easing of tension and a return to political dialogue with a view to the country's full pacification, democratization and development. That letter had yet to be answered at the time of completion of the present report.

99. On 13 October 1992, in connection with the submission of his report to the General Assembly, the Special Rapporteur met Mr. Hendrik van der Westhuizen, a member of the Permanent Mission of the Republic of South Africa to the United Nations, who requested information about the Special Rapporteur's intention to visit South Africa. He also stated that President De Klerk had referred to the existence of paramilitary groups and said that his Government would take action against them. He said that the violent groups opposed to the elimination of apartheid probably had the support of mercenaries, but that the important thing was that the South African Government was against those groups and that the concrete thing was the position of President De Klerk. He also said that the Special Rapporteur's reports should not overlook the existence of the ANC's so-called "self-defence units", which he considered to be violent bodies beyond all control. To the Special Rapporteur's request for more information about this last comment the South African representative replied that MK, the military wing of the ANC, and the "self-defence units" had carried out a number of attacks. He added that the ANC was apparently recruiting young men to form violent groups and giving them military training outside South Africa.

100. Information recently received by the Special Rapporteur shows that the contradictions and the resistance to President De Klerk's policy of dismantling apartheid, together with the ANC's demands for democratization to be speeded up and the road to it to be shortened threaten to bog down the process of building a South Africa based on a non-racial, democratic order.

There has been no amendment of the 1983 Constitution; the violence has led to the suspension of the constitutional debate; militant members of the extreme right-wing organization, AWB have apparently joined the security forces in the Province of Natal, and there have been reports of the formation of a "third force" within the military and police for the purpose of sabotaging the process of constitutional change. To this must be added the reports that young members of the Inkatha Freedom Party are undergoing military training by veterans of the Mozambican National Resistance Movement (RENAMO) at a camp called Mandleni and that substantial quantities of arms are being smuggled from Mozambique to the Province of Natal.

101. The report of the Commission of Inquiry regarding the Prevention of Public Violence chaired by Judge Richard Goldstone provides evidence of plotting by SADF Military Intelligence to discredit members of the military branch of ANC (Umkhonto We Sizwe) by linking them to criminal activity and of the use for this purpose of official archives and of the services of criminals. It is particularly noteworthy that, in May 1991, SADF Military Intelligence had recourse to the services of Ferdi Barnard, an ex-policeman who worked with the Civil Cooperation Bureau in 1988, to suppress anti-apartheid activists. To this must be added the elaboration in April 1992 of "Project Echoes", the aim of which was to send agents to London to discredit the ANC by trying to establish links between it and the Irish Republican Army. Those plans and projects form part of a conspiracy that, while it was discovered, highlight the strong resistance in governmental circles to the policies of détente and reconciliation supported by President De Klerk.

102. The Special Rapporteur reiterates that repeal of the apartheid system in South Africa, consolidation of the peace and democratization process without relapse or concessions, and increased civic awareness among the population would signal the beginning of the easing of tension and the end of the repressive methods used to enforce racist policies. Clearly, if that aim is achieved, recourse to the use of mercenaries would also be ended and the mercenaries would have to leave South Africa. The international community and, in particular, the United Nations organs that have been calling for an end to apartheid, which is a crime against humanity, should redouble their efforts to halt the racist violence, overcome the contradictions and bring to a successful conclusion the negotiations for peace and democracy in South Africa.

## V. PRESENCE OF MERCENARIES IN THE FORMER YUGOSLAVIA

103. Beginning in 1991, the territory of the former Socialist Federal Republic of Yugoslavia was the scene of a process of dismemberment from which five independent States have emerged (Bosnia and Herzegovina, Croatia, Slovenia, Macedonia and the Federal Republic of Yugoslavia comprising Serbia and Montenegro). Bosnia and Herzegovina, Croatia and Slovenia were recognized as independent States with full international personality and have since become members of the United Nations. The Federal Republic of Yugoslavia has argued that that recognition did not take into account the rights of the Serbian populations residing in the new republics. Whatever the case, disagreements between those States and problems arising from national and ethnic differences and differences of custom resulted in serious military clashes in Croatia and

then in the Republic of Bosnia and Herzegovina. On 3 January 1992, a cease-fire was achieved in Croatia under the auspices of the United Nations. The war in Bosnia and Herzegovina is, however, continuing, principally between the Government of that Republic and Serbian paramilitary organizations that are claiming national rights.

104. The war in the former Yugoslav territories has reached levels of great violence and particular cruelty. In the armed conflict that took place in Croatia and in that now going on in Bosnia and Herzegovina almost all the rules of international humanitarian law elaborated over the centuries with a view to humanizing armed conflicts and reducing the suffering they cause have been broken. Civilians have been the target of direct attacks by all sides aimed at exterminating them, provoking terror or forcing them to abandon their homes so as to create "ethnically clean areas". War casualties and the sick have been denied medical assistance, corpses have been left unburied for days or had explosives attached to them so that they will blow up, bullets have been altered to increase the suffering and reduce the chances of survival of those they wound and there have even been direct attacks on the personnel of humanitarian organizations, doctors and health workers and members of religious organizations. Prisoners of war have been tortured and ill-treated; churches and cultural monuments have been needlessly destroyed; railways and roads have been destroyed and airports have been systematically and continually bombed to prevent the landing of humanitarian relief aircraft. Lastly, there has been a return to European soil of concentration camps, where appalling violations of the most fundamental human rights are said to be taking place, while recent information reports the generalization of the large-scale, systematic rape of women.

105. These facts have caused the justified alarm and concern in the international community. Within the United Nations, the Security Council has adopted substantive agreements designed to put an end to the war, alleviate the sufferings of the civilian population in general and ensure the safe transportation of humanitarian assistance. It has also approved the establishment of a Protection Force (UNPROFOR) to monitor the cease-fire agreements and ensure the delivery and distribution of humanitarian aid. In its resolution 780 (1992) of 6 October 1992, the Security Council further decided that there should be a Commission of Experts to examine and analyse the information on breaches of international humanitarian law and that that Commission should submit its conclusions to the Secretary-General so that the Security Council could consider further appropriate steps to bring those accused of the breaches to justice. Subsequently, in its resolution 787 (1992) of 16 November 1992, the Security Council invited the Secretary-General, in consultation with the United Nations High Commissioner for Refugees and other relevant agencies, to study the possibility of and the requirements for the promotion of safe areas for humanitarian purposes.

106. The Commission on Human Rights has submitted allegations of grave violations of human rights and international humanitarian law for investigation by the relevant working groups and special rapporteurs. In addition, meeting in special session on 13 and 14 August 1992, to study the situation, the Commission decided on the urgent appointment of a special rapporteur to investigate the human rights situation in the territory of the former Yugoslavia (resolution 1992/S-1/1). Since then, the Special

Rapporteur, Mr. Tadeusz Mazowiecki, has undertaken two missions and submitted three reports (A/47/666-S/24809: E/CN.4/1992/S-1/10 and E/CN.4/1992/S-1/9). The Commission met again in special session on 30 November and 1 December 1992 and, in a resolution, condemned in the strongest terms all violations of human rights in the former Yugoslavia. In the same resolution it also, inter alia, categorically condemned the ethnic cleansing being carried out, in particular in Bosnia and Herzegovina, recognizing that the Serbian leadership in territories under their control in Bosnia and Herzegovina, the Yugoslav Army and the political leadership of the Republic of Serbia bear primary responsibility for that reprehensible practice and demanding that the Republic of Serbia use its influence with the self-proclaimed Serbian authorities in Bosnia and Herzegovina and Croatia to bring the practice of ethnic cleansing to an immediate end and to reverse the effects of that practice (resolution 1992/S-2/1).

107. For the Special Rapporteur on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, it is essential to collect information and report to the Commission on Human Rights on the alleged involvement of mercenaries in the wars in the territories of the former Yugoslavia. How many foreigners are operating and fighting in those wars, what are their capacity and status, how they arrived, who brought them, when they entered and became involved in the war machinery are questions that must be fully clarified so that the legal framework and individual categorizations are correctly formulated and responsibility can be properly attributed. The appalling violations of human rights and international humanitarian law in these war situations cannot be justified under any circumstances, but if some of these incidents are the work of mercenaries, responsibility must also be attributed to those who recruited, hired and involved them. Various United Nations resolutions have condemned the use of mercenaries, without any exception, and this is the context in which the presence of foreigners identified as mercenaries in the armed conflicts in the territories of the former Yugoslavia needs to be determined.

108. The Special Rapporteur has received from official sources and non-governmental organizations and has seen in the international press reports of the presence of foreigners in the territories of the former Yugoslavia and of their participation in crimes, torture and other types of atrocity that clearly violate the most fundamental human rights. However, since those reports refer to the foreigners in question by various terms, such as "members of paramilitary forces", "members of international brigades", "volunteers" and "mercenaries", he has preferred, as a first step and before expressing any final opinion, to make formal approaches to the parties concerned in order to seek from them official information to clarify the situation of the foreign personnel involved in military action, and the legal implications. To this end, on 29 July 1992 he sent communications to the Ministries of Foreign Affairs of the Republics of Bosnia and Herzegovina, Croatia and Slovenia and the Federal Republic of Yugoslavia, requesting detailed information on the following:

> "(a) Existence of foreign military forces in their Republic which are not present under international military assistance agreements

concluded by their countries or part of the military forces the United Nations has assigned to this area as members of UNPROFOR;

(b) Circumstances in which such foreign forces were recruited and trained; military functions they are performing and their participation in the military conflict affecting their country, in order to take account of the status of such forces under the relevant international rules;

(c) Relationship and links of such foreign military forces with the regular armed forces of their country and capacity and status granted to them by their Government;

(d) Specific information their Government might be able to provide on mercenary forces which are involved in the military conflict and which are carrying out activities on behalf of other parties to the conflict".

109. On 10 August 1992, the Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office at Geneva submitted a note verbale, which refers to the question of the presence of mercenaries in the territories of the former Yugoslavia in the following terms:

"There can be no doubt as to the soundness of the calls to reaffirm the view, accepted in international law, that to use mercenaries is a punishable offence and that States ought to prevent any person carrying out or encouraging such practices by enacting relevant legislation and criminal prosecution.

Unfortunately, the experiences of the Federal Republic of Yugoslavia from the recent armed conflict are very bad. In the case of the conflict in Croatia a large number of foreign mercenaries fought in the Croatian troops, and in the ongoing fighting in Bosnia-Herzegovina they joined the Croat and Muslim armed forces there.

It is obviously very difficult to prove that someone acts as a mercenary because of the very strict conditions imposed by international law for a person to be said to be a mercenary. The more so, as the States making use of their services wish to cover it up. This is done by employing various inhuman and brutal methods, such as, for example, the burning of the bodies of mercenaries who got killed. For this reason, the actual number of foreign mercenaries who took part in the fighting is much higher than that proved in appropriate proceedings.

Accordingly, the practice of using mercenaries can and should, in our view, be more effectively opposed primarily by the States in which they are recruited or trained. There are alarming practices, continuing over the whole period of the conflict in Yugoslavia, that many States in Europe and the world even acquiesce to public calls for the recruitment and sending of mercenaries to Yugoslavia. Advertisements have been put out in the media in quite a number of countries. Moreover, several television stations and newspapers have interviewed mercenaries who fought in Yugoslavia and who gave ample evidence that they fought as

mercenaries, saying that their attacks had been principally targeted at civilians and indicating how many Serbs they had killed and so on. Regretfully, not any of the aforementioned countries has taken steps to initiate criminal proceedings against such individuals.

The problem of mercenaries, therefore, is still a very serious problem in international law and in international relations. We are fully aware that there is no effective way in which the international community can bring about a radical and all-embracing solution to this problem. A solution could be achieved only if all States abided by the rules of international law in good faith or if they ratified the Convention on Mercenaries so that it could enter into force as soon as possible. In any case, short of an effective instrument to deal with the mercenary problem in a radical and comprehensive manner, the adoption of any measures by the Member States to prohibit the recruitment, financing, training and use of mercenaries is to be welcomed."

110. Subsequently, in a communication dated 19 August 1992, the Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office at Geneva answered in detail the Special Rapporteurs's letter of 29 July 1992, stating in essence that:

"In addressing questions relating to the use of mercenaries in military conflicts, it is necessary to bear in mind the strict criteria under international law for an individual to be regarded as a mercenary. A State using mercenaries has many possibilities to cover it up (to present mercenaries as volunteers, to eliminate corpses, etc.) For all the limitations, there exist a great many indications and circumstantial evidence on a significant participation of mercenaries in the conflict in Yugoslavia.

(a) There is no doubt that a large number of foreigners from various European and other countries took part in the activities of the Croatian armed forces and of the territorial defence forces of Bosnia-Herzegovina. Many of them were interviewed by the media in Germany, France and Great Britain, and said that they fought against Serbs for money, revealing even the number of Serbs they had killed. Such interviews were broadcast by some TV networks in these countries.

As proof of the participation of foreign combatants, who are believed to have been recruited as mercenaries, is the fact that, in a number of cases, dead bodies of Negros and Malayans were found in the aftermath of the battles that the Croatian armed forces failed to get rid of.

Finally, the most obvious proof of the use of mercenaries in the Croatian armed forces is the imprisonment of foreign combatants who admitted they were war professionals. The most striking example is the case of a United States citizen, Colton Perry, who became sergeant of the Croatian army, and was imprisoned as such in the territory of a third State - Bosnia-Herzegovina.

(b) According to the information that we had access to, mercenaries for the armed forces of Croatia and Bosnia-Herzegovina are generally recruited by the citizens of these two States in European, Asian and Latin American countries, although there were cases of recruitment by the citizens of the countries where recruitment took place (e.g. Italy). Since mercenaries are mostly recruited from former mercenary troops, who used to fight in various crisis regions of the world, they are experienced fighters and did not have to be specially trained, but were led into fighting straight away. In a few exceptions, at the beginning of the conflict in Croatia, as well as in Bosnia-Herzegovina, there were cases of imprisoned foreign citizens being taken directly to the front, without any combat experience or previous training, and thus exposing them to the extremely serious danger to life. This category of mercenaries primarily includes citizens from underdeveloped and developing countries, and advantage was taken of their difficult economic situation to recruit them.

(c) All these mercenaries are fighting under the command of regular Croatian and Muslim armed forces in Bosnia-Herzegovina. The majority of the mercenaries were classified into special units for special purposes. They by and large fight against the Serbian civilian population. They liquidate civilians in an extremely cruel manner not sparing the ailing and demolish and burn Serbian residential quarters and houses. Such a mercenary unit operated for a long time in Sisak and carried out activities in the Serbian regions of Banija and Kurdun. However, as these units are well-equipped and highly mobile, they quickly get to the regions where they will, according to the command post, undertake actions to frighten or liquidate the civilian population.

(d) The operations of the mercenary troops and mercenaries within the armed forces of Croatia and the Muslim forces in Bosnia-Herzegovina clearly show that by using mercenaries, the authorities of these Republics are making efforts to scare off the Serbian population living within their administrative borders and to perform 'ethnic cleansing' of the territory populated by Serbs and in that way directly affect the exercise of their right to self-determination."

111. The Permanent Mission of the Republic of Slovenia to the United Nations Office at Geneva has sent the Special Rapporteur a communication dated 18 September 1992 answering his letter of 29 July 1992. This communication states as follows:

"The war in the Republic of Slovenia ended on 7 July 1991. After that date we have not had any armed conflict in Slovenia. There are no mercenary forces or any other foreign military force on the territory of the Republic of Slovenia which would exist either as an independent unit or in the composition of the Territorial Defence which is the only regular armed force in the Republic of Slovenia.

The Ministry for Foreign Affairs is willing to establish close cooperation with the Special Rapporteur and provide him any further information which he might wish to obtain for his work".

112. On 20 October 1992, the Permanent Mission of the Republic of Croatia to United Nations Headquarters at New York transmitted to the Special Rapporteur a letter from the Croatian Minister for Foreign Affairs, Dr. Zdenko Skrabalo, replying to the Special Rapporteur's letter of 29 July 1992. That communication states as follows:

> "Since the beginning of the Serbian aggression against Croatia and in the course of war operations conducted on its territory, the ranks of the Croatian Army were joined by a number of foreign citizens.
>
> The rights and duties of these foreign volunteers have been on par with those of any other Croatian soldier.
>
> Their contribution to the defence of the sovereignty of the Republic of Croatia, guided as they were by the idea of the right of every people to freedom and self-determination, is not significant in the military sense, but has certainly given us a moral boost.
>
> Once the Croatian army emerged as a regular defence force with its new organization, there was no longer any need for foreign volunteers, so their demobilization from the Croatian Army was undertaken. (The Order issued by the Deputy Defence Minister Major-General Josip Lucix on the dismissal of foreign citizens from the Croatian army, dated 4 September 1992).
>
> By 10 September 1992 the bulk of foreign volunteers had been dismissed from the service in the Croatian army.
>
> To conclude, the ranks of the Croatian army were joined by foreign volunteers, who, as stated above, shared the rights and duties same as those pertaining to any other Croatian soldier, and who were no foreign mercenaries (as referred to in the 1989 United Nations Convention)."

113. The Special Rapporteur received the above-mentioned communications after he had drafted the report submitted to the General Assembly (A/47/412, annex).

114. On 13 October 1992, the Special Rapporteur had a meeting with Ambassador Dragomir Djokic, Chargé d'affaires a.i. of the Permanent Mission of the Federal Republic of Yugoslavia to the United Nations, and Mr. Milos Struga, a member of that Mission. The meeting took place in the liaison office of the Centre for Human Rights at United Nations Headquarters. Ambassador Djokic stated that his country had been and remained attentive to the need to clarify matters concerning the presence of mercenaries in the territories of the former Yugoslavia and said that their presence was connected with the forces under the orders of the Governments of Croatia and Bosnia and Herzegovina. His Government had sent the Special Rapporteur the relevant reports and was ready to extend to him the cooperation required to clarify them and to provide him any supporting information he might request. He informed the Special Rapporteur of his letter dated 7 October 1992 addressed to the Secretary-General (A/C.3/47/3) asserting that some views and comments contained in the Special Rapporteur's report to the General Assembly (A/47/412, annex) were inaccurate, particularly with respect to the political

aspects of the Yugoslav crisis, and said that the Special Rapporteur had paid little attention to the concrete reports of use of mercenaries.

115. The Special Rapporteur stressed that his report to the General Assembly was a preliminary one and that it recognized the methodological necessity of making a general assessment of the conflict and then going on to deal, in that context, with the possible presence of mercenaries. He reiterated that every report received had to be properly investigated and subjected to the test of empirical proof. In that connection, Ambassador Djokic reiterated his Government's willingness to coöperate and its readiness to extend an official invitation to the Special Rapporteur to enable him to undertake a mission to the Federal Republic of Yugoslavia to complete his studies and make the necessary clarifications. He concluded by stating that his Government hoped that, after that mission, future reports by the Special Rapporteur would contain objective details of the appropriate responsibilities.

116. In a letter addressed to the Secretary-General dated 7 October 1992 (A/C.3/473), Ambassador Dragomir Djokic expressed "surprise and dissatisfaction" at the "one-sided approach of the Special Rapporteur towards the situation in the former Yugoslavia" and the absence of "unbiased and objective information on the use of mercenaries in the territory of the former Yugoslavia". The letter included an attachment drawing to the Special Rapporteur's attention information on the presence of foreigners in the military and paramilitary forces of Croatia and Bosnia and Herzegovina. The attachment read as follows:

> "Since the outset of the armed conflict in Yugoslavia, Croatia has recruited a considerable number of foreign mercenaries, instructors and various experts for its armed units.
>
> The following are some most characteristic examples.
>
> - On 28 September 1991, a group of 51 Filipinos, including two persons from Jamaica, arrived at Sarajevo airport.
>
> - On 7 October 1991, an aircraft coming from Rome landed at the airport in Tivat. The Philippine citizens wishing to join the Croatian Army were aboard that flight. The aircraft was sent back to Rome.
>
> - Early in October 1991, over 100 Argentine citizens of Croatian origin, but also born Argentines, came to Croatia to sign up with Croatian armed forces.
>
> - In late October 1991, a group of Ukrainians contacted the Yugoslav Embassy in Moscow requesting a Yugoslav visa to travel to Croatia and join irregulars there. The office of the firm "Astra" in Moscow is the headquarters for the recruitment and sending of mercenaries to Croatia.
>
> - At the beginning of November 1991, 20 mercenaries were recruited in the Netherlands and sent to Croatia to join its irregulars.

- For several months during 1991, Colonel Gyla Attila of the Hungarian Army was attached to the Croatian National Guard (CNG) headquarters for Slavonia, Baranja and Western Srem. He was in charge of planning and undertaking combat activities of CNG units in this area.

- At the end of 1991, the Osijek operations zone of the Croatian Army had an international brigade established by Eduardo Rosses Flores, the Zagreb-based correspondent of the Catalonian paper "La Vanguardia". The brigade was composed of former French Legion combatants and mercenaries from the wars in the Middle East and Latin America. If often operated on its own in the region of Eastern Slavonia and committed massacres against Serbian civilians in the villages of Divoš, Ernestinovo, Tenjski Antunovac and others.

- The German citizen Kurt (Hans Wilhelm) Reisner, an active member of the Osijek International Brigade and Colton Perry, an American citizen, Lieutenant and Commander of the Croatian Army's 131st Reconnaissance Squad stationed at Županja, were identified in the detention camp in Sremska Mitrovica.

- A number of foreign nationals fought among Croatian National Guards in the battle of Vukovar. They were a German citizen, Harlan von Besinger, and a French citizen, Jean Nicolier.

- A Swiss national and the Dutch citizen Gerrit Bronk were killed near Okučani in November 1991 and the British citizens Edward White and Christopher Hencok, both belonging to the International Brigade, were shot near Tenjski Antunovac.

- The so-called First All-Croatian Combat Brigade station at Split and tasked with carrying out subversive sea operations has 20 Italian citizens in its ranks.

- The Croatian and Muslim sides in Bosnia and Herzegovina also have a considerable number of foreigners among their forces. Thus, for example, two American citizens were captured as members of the Croatian Army in the territory of Bosnia and Herzegovina in July 1992.

- To the extent to which offensive operations of the Muslim forces have intensified in Bosnia and Herzegovina, there has been an increasing number of citizens from Islamic States fighting in their ranks. Even humanitarian assistance shipped via airports in Sarajevo, Zagreb and Split is used to bring them in.

- On 10 August 1992, a transportation aircraft of the Iranian Air Force landed at Sarajevo airport beyond the aircraft getting in food and medicine. The trucks of Green Berets (which burst onto the runway by breaking the barrier) loaded the weapons and military equipment and an unidentified number of men on board this flight. The trucks left the airport without being inspected by UNPROFOR personnel.

- It is common knowledge that some 1,300 Mujahidins coming from a number of Islamic countries (the Islamic Republic of Iran, Saudi Arabia,

Jordan, Morocco, Turkey, the Sudan and others) are fighting on the Muslim side in Bosnia and Herzegovina. Information is available that new contingents of Islamic fighters are being prepared to join the Muslims of Bosnia and Herzegovina. According to the evidence gathered so far, they took part in massacres committed against Serb civilians, some of whom were literally butchered and molested (in the town of Goražde and villages of Milići and Teslić).

- Muslims are freely recruited and trained in Western Europe and sent in groups to Bosnia and Herzegovina. Humanitarian relief corridors leading through Croatia are mostly used for such operations.

- From among the many Muslim refugees from Bosnia and Herzegovina trying to reach Western Europe through Croatia, the Croatian authorities forcibly select combat-ready males, train them in two field camps near Zagreb and send them to the units of the Muslim-Croatian forces in Bosnia and Herzegovina.

- A large number of Europeans from several countries are fighting on the side of the Muslim-Croatian coalition in Bosnia and Herzegovina. Thus, for example, late in August 1992 the Bosnian Serb forces took one German, a Frenchman and an Englishman prisoner in combat in north-eastern Bosnia.

- Pilots and other military specialists are being trained in several camps in Hungary, Austria and Germany for the purposes of the Croatian armed forces and civil defence of Bosnia and Herzegovina loyal to the incomplete Presidency of this former Yugoslav Republic."

117. On 13 October 1992 the Special Rapporteur also met Ambassador Vladimir Drobnjac, the Permanent Representative of the Republic of Croatia to the United Nations, and Mr. Matesic, a member of the mission, who said that they considered his discussion in his reports to the General Assembly of peoples' right to self-determination to be broadly correct. On the subject of mercenaries in Croatia, they agreed that at the beginning of the war there had indeed been foreign volunteers in Croatia, who could in no circumstances be regarded as mercenaries. The Croatian armed forces had had to muster in an emergency to counter bellicose aggression and had thus been obliged to accept help from volunteers who, although foreign, were of Croatian origin. The volunteers had received the same pittance to cover their basic needs as any other Croatian soldiers, and thus could not be described as mercenaries. On asking for more information about the Croatian origins of these foreign volunteers, the Special Rapporteur was told that while the volunteers were nationalities other than Croatian, they were Croatian in origin being of Croatian descent, and could ultimately be regarded as Croatian nationals under the criterion of jus sanguinis, which many European countries use to establish nationality. The Croatian forces had now become regular armed forces and, as part of the regularization processes, the services of volunteers had become unnecessary: the volunteers had been ordered demobilized and withdrawn from the Croatian army beginning on 4 September 1992, over a period that had already expired. The matter was, consequently, closed.

118. The Croatian representatives also referred to atrocities and acts of terror which in their view formed part of the Serbs' military strategy, and to the evacuation of entire settlements in fulfilment of Serbian plans for "ethnic cleansing". They said that the obsession with creating zones purged of non-Serbs was the main reason for the atrocities and violations of human rights committed by the Serbs, first in Croatia and later in Bosnia and Herzegovina. They did not discount the possibility of reprisals, which were understandable, if hardly justifiable, in the context of the humiliations suffered and the violence inflicted. They added that the members of the Croatian forces in Bosnia and Herzegovina - chiefly the forces of the Council for the Defence of Croatia (HVO) - could not be considered mercenaries either, since Croats made up of 17 per cent of the population of the Republic. Many had fought on the Croatian side to repel the Serbian aggression; by the time they went home to Bosnia and Herzegovina, they had some military experience and were ready for the possibility that war might break out in Bosnia and Herzegovina. Mention was also made of the agreements between the Bosnian and Herzegovinan and Croatian authorities on coordination of the defensive assignments of the two countries' armed forces.

119. The Croatian representatives stated that the Serbian forces in Bosnia and Herzegovina and in Croatia, were basically paramilitaries receiving continual, long-standing logistical support from Serbia. They basically comprised members of the Yugoslav People's Army who had opted to remain in the new republics, taking possession of large quantities of weapons and military equipment belonging to the Yugoslav People's Army. The Serbian paramilitaries had weapons to spare but were short of manpower, while the governmental forces in Bosnia and Herzegovina faced the opposite problem, being short of the weapons they needed to protect their people and land. It was entirely possible that there were mercenaries among the Serbian paramilitary forces. Reference was made to one individual of Polish nationality who had admitted in court that he was a mercenary fighting for the Serbian paramilitary groups, and to Ukrainians, Czechs and others among the foreigners fighting for the Serbs.

120. The Special Rapporteur met Ambassador Danilo Türk, Permanent Representative of the Republic of Slovenia to the United Nations, on 13 October 1992. Mr. Türk described the situation in the territories of the former Yugoslavia as difficult and complex, and repeated the terms of his Government's official communication dated 18 September 1992.

121. On 14 October 1992, the Special Rapporteur had a meeting with Ambassador Mohamed Sacirbey, the Permanent Representative of the Republic of Bosnia and Herzegovina to the United Nations, who stated that there was no one in his Government's armed forces who could be described as a mercenary. The main problem facing his Government was the lack of weapons and munitions for the people of Bosnia and Herzegovina to defend themselves with; that it might need to resort to the use of mercenaries had never been suggested. Among the Croatian forces of the Council for the Defence of Croatian (HVO) there might perhaps be some individuals of criminal background or behaviour who needed to be identified and punished as such, but not even they could be regarded as mercenaries. He rejected the claim that a number of "Islamic warriors" and Mujahidin were fighting on the side of the Government forces. There were indeed some students from Islamic countries, but they could not under any

circumstances be described as mercenaries. The Croatian forces of the HVO were cooperating with Government forces on the basis of coordinated defence agreements. They were operating in the south-west of Bosnia and Herzegovina, under the command of a gentleman named Mr. Bovan, an opponent of the Government but a recognized representative of the Croatian population of Bosnia and Herzegovina.

122. Ambassador Sacirbey said that it was very difficult to prove there were mercenaries among the Serbian paramilitary forces, but widespread accounts of involvement by nationals of the Russian Federation as pilots of the aircraft used by the Serbian paramilitaries could not be ignored, nor could other reports of Serbian paramilitaries being supported by communist of various nationalities faithful fighting for the Serbian cause. He added, however, that such reports needed to be more reliably substantiated. What had been proven was that individuals from Serbia were joining the Serbian paramilitary forces fighting in Bosnia and Herzegovina, undergoing two weeks of military training, then taking part in military operations, sacking property, and being paid for it. Forced resettlement was at present a profitable business for Serbs.

123. Ambassador Sacirbey admitted that there were foreigners among the governmental forces of Bosnia and Herzegovina, stating that they were volunteers who had been neither invited nor hired by the Government and certainly could not be described as mercenaries. On the contrary, the Government of Bosnia and Herzegovina had received a number of offers of service from mercenaries which it had always rejected and would continue to reject, since his country should remain free from the presence of such elements.

124. In meetings at United Nations Headquarters with representatives of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia, the Special Rapporteur was told that the Governments of those States were prepared to issue him with invitations so that he could see on the spot the facts reported and commented upon. These invitations had not been formally issued by the time this report was drafted.

125. Additional information received by the Special Rapporteur refers to foreigners of various nationalities said to have been fighting in the war in Croatia and currently raging in Bosnia and Herzegovina. Reference has been made to the presence of those conflicts of a British citizen known as Captain Carl, said to have been the sub-commander of the Croatian forces' First International Brigade, the Australian Tonka Jelik, said to have been the Brigade's public relations officer; the Australian Allan Hetherington-Clebberley; the Spanish citizen Eduardo Flores Roza, said to have taken part in the defence of the hamlet of Laszlovo; the British citizen Carl Finch and two more British citizens, Robert Sears, said to have fought in Vincovci, and a man known as Captain John Thompson.

126. The international press has reported the presence of foreigners known as "Dusan Silni", "Arkan's Men" and "white eagles" in Serbian paramilitary

groups, and has described such specific situations as the offer in Tehran of US$ 600 per month to anyone prepared to fight with the Muslim forces in Bosnia and Herzegovina. These reports and accounts need to be investigated in situ so that definitive conclusions can be drawn.

127. What the Special Rapporteur can state is that foreigners have supported and been involved in armed conflicts in the former Yugoslavia. Determining whether these really are mercenaries specially recruited and hired to carry out military operations requires more detailed information and investigations on the spot. Only thus can responsibility be correctly attributed.

128. These foreigners are said to have taken part in the repellant practice of "ethnic cleansing", a concept which cloaks murder, torture, systematic rape of women, including minors, and culpable acts of expulsion, particularly of Bosnian Muslims.

129. The Special Rapporteur hopes to receive formal confirmation of the invitations extended to him so that he can carry out investigations on the spot, investigate the reports received and reach definitive conclusions. Mercenary involvement in the conflicts taking place in the former Yugoslavia can only aggravate and exacerbate them because fighting is mercenaries' business, and killing, mutilating, torturing and raping are proof of their efficiency.

## VI. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

130. The General Assembly, realizing that mercenaries were being used, recruited, financed and trained for activities violating such principles of international law as the sovereign equality, political independence and territorial integrity of States and the self-determination of peoples, adopted and opened for signature and ratification or accession the International Convention against the Recruitment, Use, Financing and Training of Mercenaries by means of resolution 44/34, of 4 December 1989. It thus contributed to the progressive development and codification of international law on the matter, reaffirming the purposes and principles enshrined in Articles 1 and 2 of the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), of 24 October 1970).

131. The entry into force of the International Convention will signal the introduction of broader, deeper, more specific and more up-to-date international regulations to prevent, prosecute and punish recourse to the recruitment, use, financing and training of mercenaries. It will thus increase and extend cooperation among States in eradicating such activities and will promote observance of the purposes and principles enshrined in the Charter of the United Nations. The Special Rapporteur therefore notes with concern that, by the time this report was drafted, only five States had completed the constitutional procedures necessary to indicate their willingness to be bound by the International Convention: Barbados, which acceded on 10 July 1992; Maldives, which signed the Convention on 17 July 1990 and ratified it on 11 September 1991; Seychelles, which acceded to the

Convention on 12 March 1990; Suriname, which signed the Convention on 27 February 1990 and ratified it on 10 August 1990; and Togo, which deposited its instrument of accession on 25 February 1991.

132. It should be noted that 14 further States have signed the International Convention: Angola (28 December 1990), Belarus (13 December 1990), Cameroon (21 December 1990), Congo (20 June 1990), Germany (20 December 1990), Italy (5 February 1990), Morocco (5 October 1990), Nigeria (4 April 1990), Poland (28 December 1990), Romania (17 December 1990), Ukraine (21 September 1990), Uruguay (20 November 1990), Yugoslavia (12 December 1990) and Zaire (20 March 1990).

133. The Convention is to enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations, as stipulated in article 19, paragraph 1. The Special Rapporteur is duty bound to draw attention to the slowness of the process whereby States agree to be bound by the International Convention through ratification or accession, since to date only five States have completed the process.

134. The Special Rapporteur cannot but point out a disturbing inconsistency: the international community, chiefly through the efforts of the United Nations and the Organization of African Unity, has made important advances in its campaign to eliminate recourse to the use of mercenaries. Yet the Convention adopted by the General Assembly and negotiated under its auspices to prevent and punish such activities cannot enter into force three years after its adoption because not enough States are parties to it. The Convention confirms the legal nature of the many resolutions and declarations by the United Nations condemning activities linked to mercenaries, and states that the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to all States, and that any person committing any of these offences should be cited, prosecuted or extradited. Hence it is vital for the International Convention to take effect in order to make international cooperation among States in preventing, prosecuting and punishing these crimes more effective.

135. Despite the delay in the entry into force of the Convention, the Special Rapporteur must point out that the principles of international law and the rules of customary and conventional international law applicable to the eradication of these reprehensible activities, which so seriously affect the enjoyment of human rights and the exercise of the right of peoples to self-determination, apply in full.

## VII. CONSEQUENCES OF ACTS OF VIOLENCE COMMITTED BY ARMED GROUPS THAT SPREAD TERROR AND BY DRUG TRAFFICKERS FOR THE ENJOYMENT OF HUMAN RIGHTS

136. On 28 February 1992, the Commission on Human Rights adopted, without a vote, resolution 1992/42, in which it reiterated its deep concern at the adverse effect, on the enjoyment of human rights, of persistent acts of violence committed in many countries by armed groups, regardless of their origin, that spread terror among the population, and by drug traffickers (para. 1). The resolution requested all special rapporteurs and working groups, in their forthcoming reports to the Commission, to continue paying

attention to the adverse effect on the enjoyment of human rights of such acts of violence committed by armed groups (para. 2), and requested the Secretary-General to continue collecting information on this question from all relevant sources and to make it available to the special rapporteurs and working groups concerned for their consideration (para. 4). It decided, finally, to continue its consideration of the question as a matter of high priority at its forty-ninth session (para. 5).

137. In fulfilment of the provisions of this resolution, the Special Rapporteur applied to the Special Procedures Section of the Centre for Human Rights for the relevant information for his study and commentary. The existence of violence-oriented armed groups that spread terror among the population and of drug traffickers who also act as armed groups or in conjunction with them are facts that cannot be denied or ignored. In addition, there is the mercenary activity which frequently infringes the sovereignty of a State and the right of its people to security, thus establishing complex criminal associations which may create situations having a multiple destructive effect.

138. The Special Rapporteur draws attention to the fourth preambular paragraph of resolution 1992/42, which notes the responsibility of the individual to promote and observe the rights recognized in the International Covenants on Human Rights. Indeed, every individual has duties towards other individuals and to the community to which he belonged. The corollary of any individual right is the obligation to comply with duties at the same level and having the status and category. For example, the right to life and the right that life should be preserved and respected has as its natural and legal corollary the duty to respect the right to life of all other persons. Consequently, a group of individuals that organizes itself voluntarily and deliberately as an armed group against the authority of a legitimately established State, and which has recourse to violence in order to intimidate a population or to impose its political and military goals on it, undermines the enjoyment of human rights of other individuals and the community as a whole. No group, and certainly not a group that has recourse to arms, has any recognized or accepted competence or authority to undermine the enjoyment of the human rights and fundamental freedoms of other individuals.

139. In his previous report to the Commission on Human Rights (E/CN.4/1992/12), the Special Rapporteur pointed out that the legal approach which confers on States the obligation to be answerable for the human rights of their peoples was correct and should be maintained and strengthened. This obligation on the part of the State should not, however, preclude the study and consideration of complex phenomena of growing autonomy in society and, as part of this autonomy, critical situations of defiance or unlawful competition may arise which may encroach upon the sphere of action reserved for the State. This is precisely the case with the emergence and organization of armed groups which resort to deliberately spreading terror in order to impose their plans in an attempt to prevent the State from complying with its international obligations and to appropriate its authority by unlawful means.

140. There are, of course, situations in which the struggle against the State may have a historical and factual basis but, even in such cases, it is unacceptable, from the standpoint of the enjoyment of human rights, that the

population should be intimidated and subdued by terror in order to defy the State and that individuals should be cruelly assassinated, mutilated and tortured or kidnapped, that they should be subjected to extortion, that entire populations should be prevented from exercising their political right to elect and be elected by the vile means of amputating voters' fingers, that children should be used to carry explosives - children who will die when the bombs go off - that the economic infrastructure and cultural heritage of a people should be destroyed or that the corrupting power of drug trafficking should be used to destroy a country's judiciary and its police; that the lives and safety of ministers in places of worship should be attacked in order to prevent religious services from being held and to undermine people's faith; these are some of the activities attributed objectively to armed groups which spread terror, to drug traffickers and to mercenaries in a number of countries.

141. The campaign to guarantee human rights and fundamental freedoms should also be conducted in a strict context of respect for human rights. Those States which combat armed groups that have recourse to terror, drug traffickers and mercenaries should not forget that the action against them is conducted on behalf of the right to life, freedom, security, self-determination and development of their peoples and that the legitimacy of the State must always be based on legality, democracy, compliance with its international obligations and the assent of its citizens.

142. In accordance with the above approach, the Special Rapporteur has considered the charges filed by the Governments of Bangladesh, Colombia, El Salvador, Guatemala, Iraq, Peru, Sri Lanka, Turkey and the Ukraine with the Centre for Human Rights. He has taken note of the important technical contributions and comments provided by the Governments of Chile and Cuba, and has also taken note of the information supplied by the Governments of Armenia, Bahrain, Egypt, Grenada, Jamaica, Jordan, Liechtenstein, Mauritius, Papua New Guinea, Syria, Thailand, Uruguay and Yugoslavia, Federal Republic of. He has also learnt, from his own sources, of the presence of armed groups that spread terror in Afghanistan, Algeria, Armenia, Azerbaijan, Chad, France, Georgia, India, Italy, Lebanon, Mozambique, the Philippines, Somalia, Spain, South Africa, Sudan, Tajikistan and the United Kingdom, as well as the presence of bands of drug traffickers operating illegally in various countries including Afghanistan, Bolivia, Colombia, Iran, Islamic Republic of, Pakistan, Panama, Peru, Turkey, United States of America and in various countries of Western Europe. Finally, because of the topic assigned to him, he knows how mercenaries also have links with armed groups or work for drug traffickers, establishing criminal associations which have appalling consequences for the full enjoyment of human rights.

143. It is important to stress that many of the acts of violence committed by armed groups that resort to spreading terror with adverse consequences for human rights have occurred in States ruled by democratic Governments appointed in pluralistic, free and multi-party elections. These acts are not the work of groups that seek an open and democratic exercise of power or of national liberation movements; they are the work of groups that espouse dogmatic, totalitarian ideologies, which behave in a fanatical manner and whose political strategy is based on the commission of terrorist activities. They are groups that exist to oppose democracy, not champion it, although they tend

to take refuge in a cynical show of democratic legitimacy, on occasion even seeking international sympathy and solidarity as a means of shrouding their terrorist practices and criminal methods. The cases of Colombia, Peru and the Philippines clearly illustrate the existence of such groups which, in league with gangs of drug traffickers, often assail democratic regimes and diminish their prospects of advancing and growing stronger.

144. Many of the charges concerning action by armed groups that spread terror refer to situations of violence which had the desired effect of preventing entire populations from exercising the right to elect their authorities. Such prevention undermines a fundamental political right, one which is in essence a basic human right. In such situations, the international community must react by reasserting the unrestricted and effective exercise of such political rights and by making it clear to the armed groups responsible that their acts will be condemned and repudiated.

145. In the view of the Special Rapporteur, respect for human rights and fundamental freedoms constitutes an obligation which does not admit of exceptions; in that responsibility States have a primary and non-transferable role to play. States should strive to defend, protect and guarantee the rights inherent in the human person, irrespective of the circumstances and problems confronting them. Non-governmental organizations and individuals should continue to contribute towards the sustained and effective exercise of all aspects of human rights, striving to comply with their obligations concerning the promotion, respect and defence of human rights and to help to promote a clear understanding of the problems faced in that domain by each separate society. States, international organizations, non-governmental organizations and individuals should contribute to the establishment, in those countries afflicted by the activities of armed groups which have recourse to violent options by drug trafficking and by extreme poverty, of objective conditions in the political, economic, the social and cultural spheres which will allow and guarantee the effective enjoyment by all persons of human rights.

## VIII. CONCLUSIONS

146. The General Assembly, the Economic and Social Council and the Commission on Human Rights have repeatedly condemned, adducing well-founded legal arguments, the use, recruitment, financing and training of mercenaries. In conformity with the resolutions adopted by the United Nations in 1992, mercenary activity should be considered as a serious offence against the self-determination and human rights of the peoples who are the victims of this criminal activity, irrespective of the forms it takes. Consequently, in conformity with the condemnation by the United Nations, State Members should extend active support to this position, adopt the necessary measures and exercise the utmost vigilance against any threat of criminal mercenary practices. A further conclusion is that States should in any circumstances refrain from recruiting mercenaries and from allowing or tolerating third parties to use their territory or to take advantage of the absence of clear-cut legislation in order to recruit, finance and train mercenaries.

147. The conclusion drawn from the foregoing is that the thinking of the United Nations is one of total and absolute rejection and condemnation of the

activities of mercenaries and that its position in this matter is highly opportune. It is also gratifying to note, from the information received by the Special Rapporteur, that various States Members of the United Nations are in the process of amending their criminal legislation to make mercenary activities an offence.

148. The information received by the Special Rapporteur also indicates that although mankind has benefited from the ending of the so-called "cold war" and the international ideological confrontation, the presence of mercenaries has not diminished and there is even a likelihood that it may have increased. The activities of mercenaries who oppose self-determination, engage in armed conflicts and work for payment for one or both parties to a conflict are well known. However, in addition, in the context of the shaping of new States and the reappearance of nationalist trends as well as religious and ethnic problems, a variety of situations of political and military tension have emerged, internally as well as internationally, which in some cases have resulted in armed conflicts in which the presence of mercenaries has been reported.

149. On the basis of the reports received, a number of events verified by the international press and preliminary studies conducted by experts, it may be concluded that in the armed conflicts that have broken out in connection with the formation of new States, the presence of mercenaries has contributed to undermine self-determination and also, very directly, to violate fundamental human rights of the peoples residing in those regions.

150. Apart from this main conclusion, the information received by the Special Rapporteur from States and specialized agencies and also taken from the international press makes it clear that the existence of an ample supply of mercenaries is decisive in their forming links with other criminal acts, such as terrorism, the traffic in arms and drug trafficking. This supply, which forms a kind of international market, of mercenaries available to act individually or in a group, engaging in unlawful activities which may indiscriminately undermine the sovereignty of a State, the self-determination of a people or the stability of a constitutional Government should receive attention from all States Members of the United Nations with a view to agreeing on policies aiming at the elimination of the "crime market".

151. It is important, in relation to the unlawful activities that form the subject-matter of these conclusions, to bear in mind that the internationally condemned offences in which mercenaries are involved should include those offences in which they engage as gangs linked with gangs of arms dealers, drug traffickers and terrorists. It should be borne in mind that an irregular armed group that engages in terrorism may turn into a mercenary group by moving to the territory of another State, in order to provide protection, for payment, to a gang of drug traffickers, to provide cover to the arms trade, to link up with an internal group which has taken up arms or to occupy a portion of foreign territory wresting it from the authority of the sovereign State.

152. As indicated in the previous conclusions, although generally speaking one might speak of reduced tensions internationally, the situations of tension and armed conflict have not diminished and new sources of conflict have even appeared. Nevertheless, Africa which was originally the continent worst

affected by mercenary activities continues to suffer from the activities of mercenaries who are involved in various conflicts. Even when some countries have resolved their conflicts or reached the stage of resolving them, and consequently ending or reducing the activities of mercenaries which undermined their self-determination, this situation cannot be generalized as a conclusion applicable to the entire continent; the international community should support the unconditional right of Africa to self-determination, to development and to the full enjoyment of human rights by its peoples.

153. In the case of Angola, this report concluded that the application of the peace agreements signed in Lisbon between the Government of President Dos Santos and UNITA which included demobilization as well as the general elections conducted in the presence of United Nations observers brought to an end the armed conflict in which the active presence of gangs of mercenaries had been established. In the circumstances, and by joint agreement with the Angolan Minister for Foreign Affairs, the Special Rapporteur agreed to cancel his second scheduled visit to Angola. However, the present report reflects the concern about military operations that occurred following the elections and which might point to a resumption of the internal conflict and the possibility that mercenaries would again seek to undermine the rights of the Angolan people. Although no report of further acts has been received, the Special Rapporteur concludes that there is a need for the Commission for Human Rights to monitor attentively the process of democratization and of national reconciliation.

154. With regard to the armed conflict which is taking place in Liberia between the governmental forces of that country, whose interim Government is headed by Amos-Sawyer and the forces of Charles Taylor, in the course of 1992 the Special Rapporteur received information which pointed to a real danger that the conflict would become international, involving the States of Guinea and Sierra Leone on the one side and Burkino Faso and Côte D'Ivoire on the other, and a related danger of recourse to further mercenary activities. There are contradictory reports about the presence of mercenaries in the conflict and accordingly, the Special Rapporteur is requesting further clarifications on the reports received; however, apart from that, he repeats, by way of conclusion, his suggestion that the functions assigned to the ECOMOG forces should be strengthened (CA/47/402, annex, para. 70).

155. In Mozambique, which was the subject of extensive study in all the reports by the Special Rapporteur, the evolution of armed conflict in the course of 1992 allows an optimistic conclusion to be drawn since a general peace agreement was signed in Rome on 4 October of that year. The agreement has begun to be implemented and conversations have started between the parties in order to assemble the armed forces of the Government and those of RENAMO in specific areas, and to move on to a demobilization process which will be completed in April 1993 with the formation of a new National Army of Mozambique made up of 30,000, with personnel from both sides. The civil war in Mozambique was characterized by its extreme cruelty and by the presence of mercenaries, a consequence of which was the systematic violation of human rights in Mozambique.

156. The policy of apartheid implemented by South Africa has produced disturbances throughout the whole of southern Africa. The United Nations and

the entire international community have condemned this system of racial discrimination, which infringes fundamental human rights. This inhuman system was applied for a number of years in South Africa and also led to the sponsoring of international unlawful activities, for which the use of mercenaries was one of the criminal expedients applied. The participation of mercenaries was reported in various conflicts in the region as well as in attempts on the lives of ANC leaders. Various judicial investigations currently under way in South Africa have confirmed that mercenaries participated in criminal activities. The initial conclusion should inevitably be that the condemnation of the system of apartheid should be repeated and that the international community should continue to monitor the situation until apartheid has been completely eliminated.

157. It is important to note the policy implemented by President De Klerk for dismantling the apartheid regime, which has been approved by a referendum. At the same time, commissions are investigating the crimes committed by members of the defence forces of South Africa and the South African police, which have confirmed the involvement of mercenaries who were entrusted with the most violent actions in applying the policies of apartheid. The information collected identifies problems of slowness and sluggishness in the process of democratization and of dismantling apartheid. These problems would seem to be related to the underlying discrepancies in the type of democracy to be established in South Africa. Acts of violence have occurred, such as the massacre of Boipatong in the suburbs of Johannesburg on 17 June 1992, when at least 42 people died; some reports have indicated the involvement of white groups that advocate violence and mercenaries. These clashes have put back the political dialogue and generated distrust, causing the emergence of hard-line, violent positions among all groups.

158. In the course of 1992, the Special Rapporteur received a number of reports of the presence of mercenaries involved in the armed conflicts taking place in the territories of the former Socialist Federal Republic of Yugoslavia. This report deals at length with these events and reports (paras. 103-129), and the Special Rapporteur repeatedly indicated his concern at them and had meetings with the representatives of the Permanent Mission of the Federal Republic of Yugoslavia to the United Nations, with the Permanent Representative of the Republic of Croatia to the United Nations, as well as with the Permanent Representatives to the United Nations of the Republic of Slovenia and the Republic of Bosnia and Herzegovina, in order to obtain more detailed information about the status, condition and situation of foreigners present in the territories of these republics and who are reported to have instigated conflicts. The presence of foreigners is admitted by all, although not the status as mercenaries of some or all of them; this has given rise to sharp controversy among the conflicting parties.

159. For the reasons explained, the Special Rapporteur deems it necessary to state, by way of preliminary conclusion, that the violations of human rights committed in the course of the conflicts in the former Yugoslavia, including the "ethnic cleansing" operations, which cloaks acts of expulsion, murder, torture and systematic rape of women, must once again be repudiated and condemned and that the participation of mercenaries in these acts, if established, should be considered as a further complication. On this question, the Special Rapporteur indicates that foreigners have participated

in the armed conflicts that have taken place and are taking place in the former Yugoslavia. However, to determine whether in fact they are mercenaries specially recruited and hired to carry out military operations and acts of violence against the population necessitates further information and investigations on the spot in order to establish the appropriate responsibilities. Should the invitations extended by the representatives of the republics established on the territories of the former Yugoslavia materialize, the Special Rapporteur's in loco investigations would be conducted, if our suggestion is accepted, in consultation and cooperation with the thematic Special Rapporteur appointed by the Commission on Human Rights.

160. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries needs to be ratified or acceded to by 22 States in order to enter into force. However, at the date on which the report was drafted, only 5 States had completed the constitutional procedures necessary to indicate their willingness to be bound by the Convention (Barbados, Maldives, Seychelles, Suriname and Togo). It may thus be concluded that there is some delay in securing the ratifications and accessions necessary for its entry into force, a factor which is impeding cooperation among States in preventing, prosecuting, punishing and eradicating mercenary activities.

161. In conclusion, with respect to resolution 1992/42, by which the Commission on Human Rights reiterated its deep concern at the adverse effect, on the enjoyment of human rights, of persistent acts of violence committed in many countries by armed groups, regardless of their origin, that spread terror among the population, and by drug traffickers, the Special Rapporteur, having regard to paragraph 2 of that resolution, has reviewed the reports received in the Centre for Human Rights, confirming from his study and the cases with which he was directly acquainted that there is a dangerous and escalating tendency towards acts by armed groups, drug traffickers and mercenaries which, independently or together, are spreading terror among the population. These groups interfere or prevent the State from guaranteeing the rights, freedoms and security of the population, creating objective situations which affect the enjoyment of human rights and fundamental freedoms of the peoples who are the victims of their violent activities.

162. The conclusion reached from a study of these facts is that although the State has the primary obligation to respect, protect and defend human rights, such an obligation and public responsibility cannot exempt any individual from the obligation to respect the right to life and the legally protected possessions of others. Consequently a group of individuals which voluntarily and deliberately organizes itself as an armed group against the authority of a legally established and legitimately functioning State, and which has recourse to violence in order to intimidate a population, or to impose its political and military goals on it, undermines the enjoyment of the human rights of other individuals and the community as a whole. No group, certainly not a group that has recourse to arms, can claim competence or much less authority to undermine the enjoyment of the human rights and fundamental freedoms of other individuals. According to information which has been confirmed, situations of this kind, which must be vigorously denounced and condemned, exist in countries such as Bangladesh, Colombia, Iraq, Peru, Sri Lanka, Turkey, inter alia, and the relevant complaints by Governments and non-governmental organizations have been received by the Centre for Human

Rights. However, as pointed out in paragraph 142 of the report, those are not the only countries whose people endure the activities of armed troops that spread terror.

## IX. RECOMMENDATIONS

163. In the light of the course followed by the United Nations and the adoption, by the General Assembly, the Economic and Social Council and the Commission on Human Rights itself, of resolutions condemning the use, recruitment, financing and training of mercenaries, which are activities considered as offences of grave concern that undermine the self-determination and human rights of peoples, considering, on the basis of the information received, that such activity constitutes a real danger, which has materialized in several cases in recent years, the Special Rapporteur recommends that the Commission should reiterate in a specific resolution its condemnation of the activities of mercenaries and of the States or third parties involved in such activities, and at the same time pointing out the need to strengthen the principles of sovereignty, equality before the law, independence of States and self-determination of peoples, as well as the full enjoyment of their human rights and respect for the stability of their legitimately functioning and constitutionally established Governments.

164. Having noted that throughout 1992, the activity of mercenaries has been maintained and that they continue to be involved in armed conflicts especially in the new States which emerged as a result of the end of the so-called "cold war", the Special Rapporteur recommends that the Commission should express its concern at the armed conflicts which have broken out in the process of the creation of new States, and that it should support the efforts being made by other United Nations bodies as well as international regional organizations to bring about détente and peace, drawing the attention of those new States and the international community in general to the danger of tolerating in those countries the presence of mercenaries, which impairs, de facto, the self-determination and fundamental human rights of the peoples who reside in those areas.

165. All the evidence gathered points to the existence of an ample supply of mercenaries, which has increased because of the changes occurring on the international scene and also because of the increase in international criminal activity. Consequently, mercenaries offer their services to intervene in armed conflicts in return for payment, and also to engage in internationally unlawful activities, such as terrorism and trafficking in arms and drugs. In view of the foregoing, it should be recommended that States should take cognizance of these grave dangers so that at the international level they agree on and adopt measures to abolish this market in crime and so that similar criteria may be established in their national legislation.

166. It is further recommended that the Commission on Human Rights should study the possibility of proposing to the General Assembly and to other bodies within the system, measures to Member States for the prosecution and punishment of mercenaries and mercenary-related activities, including internal legislation to prosecute the transit of mercenaries, through their territory, forbid their nationals as well as the nationals of other countries who reside in their territory from serving as mercenaries, categorize their involvement

in related crimes such as trafficking in arms, drugs and money obtained by dishonest means as an aggravating factor in respect of their status as a mercenary; in conclusion, the recommended study should also include the terms under which extradition agreements should be signed for when their nationals are sought by victim States on the basis of their proven involvement in acts contrary to the enjoyment of human rights and the exercise of the sovereignty of States, the constitutional stability of Governments and the self-determination of peoples.

167. Bearing in mind that Africa has been the continent most affected by mercenary activities, and that these activities are still being pursued in some of the conflicts of the region, and that therefore they remain as a latent and potential danger to the countries of that continent, it is recommended that the Commission should vigorously condemn the presence of mercenaries and groups or States which encourage their activities in Africa and at the same time reiterate its unwavering support for the self-determination, development and the full enjoyment of the human rights of the peoples of that continent, and also indicate its support for measures which may be adopted in accordance with international law and national legislation, in the case of countries affected by the presence of mercenaries.

168. Concerning the situation in Angola, and taking into account the fact that the internal conflict which affected that country has been formally settled, that democratic elections have been held in the presence of United Nations observers and that its authorities have declared, in a communication to the Special Rapporteur that the mercenaries who were involved with the internal conflict have ceased to be so, it is recommended that the Commission should support the process of pacification, democratization and national reconciliation in Angola while indicating its willingness to assist in preventing a recurrence of tensions and violence which could reactivate the internal conflict. Within the scope of this recommendation, the Special Rapporteur is willing to respond to any requests which may be made to him should he receive any reports concerning activities of mercenaries attempting to undermine the peace in Angola.

169. Considering the evolution of the armed conflict in Liberia and the information reporting the use of mercenaries, it is recommended that all the parties in the conflict should be urged to take steps towards its solution through dialogue and political negotiation, avoiding its internationalization. This recommendation should also indicate that the ECOMOG forces should immediately discharge the mandate for which they were sent to the country and which includes ensuring their freedom of movement throughout the national territory, dispersing, disarming and demobilizing the opposing forces.

170. In Mozambique, the armed conflict which had worsened due to interference by third States and the activity of gangs of mercenaries, has reached the point of solution on the basis of an agreement between the parties signed on 4 October 1992 in Rome. It is therefore recommended that support should be extended to the process of armed demobilization, pacification, democratization and national reconciliation in Mozambique, while at the same time reiterating condemnation of interference by third States and mercenaries.

171. In the light of the difficulties and the resistance to the policy promoted by President De Klerk in South Africa, in order to dismantle the apartheid regime and introduce the system of democracy in the country, and bearing also in mind the formation of groups committed to violence in which mercenaries were reported to be involved, fomenting massacres, communal clashes, pillaging, vandalism and encouraging the adoption of the most radical positions by the parties, it is recommended that the vigorous condemnation of the apartheid regime in South Africa and the acts of violence to boycott or delay the process of the dismantling of apartheid should be reiterated and that, at the same time, support should be extended to the dialogue and the negotiations between the organizations which have legitimate representation, in order to bring to an end the apartheid regime, and to achieve a genuinely pluralist and representative democracy and national reconciliation in South Africa.

172. In view of the difficult and complex situation which has arisen in the former territories of the former Federal Republic of Yugoslavia, the armed conflicts which have occurred and the serious violations of human rights, such as the "ethnic cleansing" operations, it is recommended that the Commission on Human Rights should reiterate its earlier resolutions on the subject, and emphasize the need for coordination between the thematic Special Rapporteurs and the Special Rapporteur appointed by the Commission for dealing with the case as a whole. Similarly, the need should be highlighted for more precise information concerning the reported involvement of mercenaries in the armed conflicts in the former Yugoslavia, including on-the-spot verification by the Special Rapporteur of the activities of the mercenaries when the invitations issued by the Republics of Croatia, Bosnia and Herzegovina of the Federal Republic of Yugoslavia have been confirmed.

173. With regard to the Convention, it is recommended that the General Assembly should urge the States Members of the United Nations to give prompt consideration to ratifying or acceding thereto. Its entry into force is necessary because it is an essential instrument for ensuring the security of peoples and their freedom from mercenary activities which threaten the full exercise of their right to self-determination and the full application and enjoyment of human rights.

174. With regard to Commission on Human Rights resolution 1992/42, which calls for studies and findings on the adverse effect on the enjoyment of human rights of the activities of armed groups that spread terror and of drug traffickers, the Special Rapporteur, following an analysis of the issue and a review of many reports, has concluded that there are, indeed, groups that have been identified with illegal and illegitimate practices, including the use of terror to intimidate individuals and populations, causing grave harm to human rights and fundamental freedoms. The Special Rapporteur recommends that the United Nations organs should continue consideration of the subject as a matter of high priority and to intensify their consideration until they find the most appropriate legal framework and punitive measures to be applied under international and domestic legislation against groups that spread terror among populations.

175. Finally, and on this subject, the Special Rapporteur repeats the recommendation which he made in his report E/CN.4/1992/12 to consider the desirability of assigning the Centre for Human Rights to organize working meetings where the philosophical, political, legal and practical aspects of this subject can be discussed. He likewise recommends that consideration be given to reminding Member States and intergovernmental and non-governmental organizations that respect for human rights is a universal principle, which does not admit of any exceptions, the defence of which is a primary obligation of States. Equally, organizations in society at large must contribute to the full exercise of human rights by promoting collective awareness, with the vigorous rejection of policies of violence, these being the primary cause of disregard for human rights in the name of policies which proclaim an alternative and better form of justice.

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